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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 569

ANDERSON-PRICHARD OIL CORPORATION,
Appellant,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATEMENT AS TO JURISDICTION

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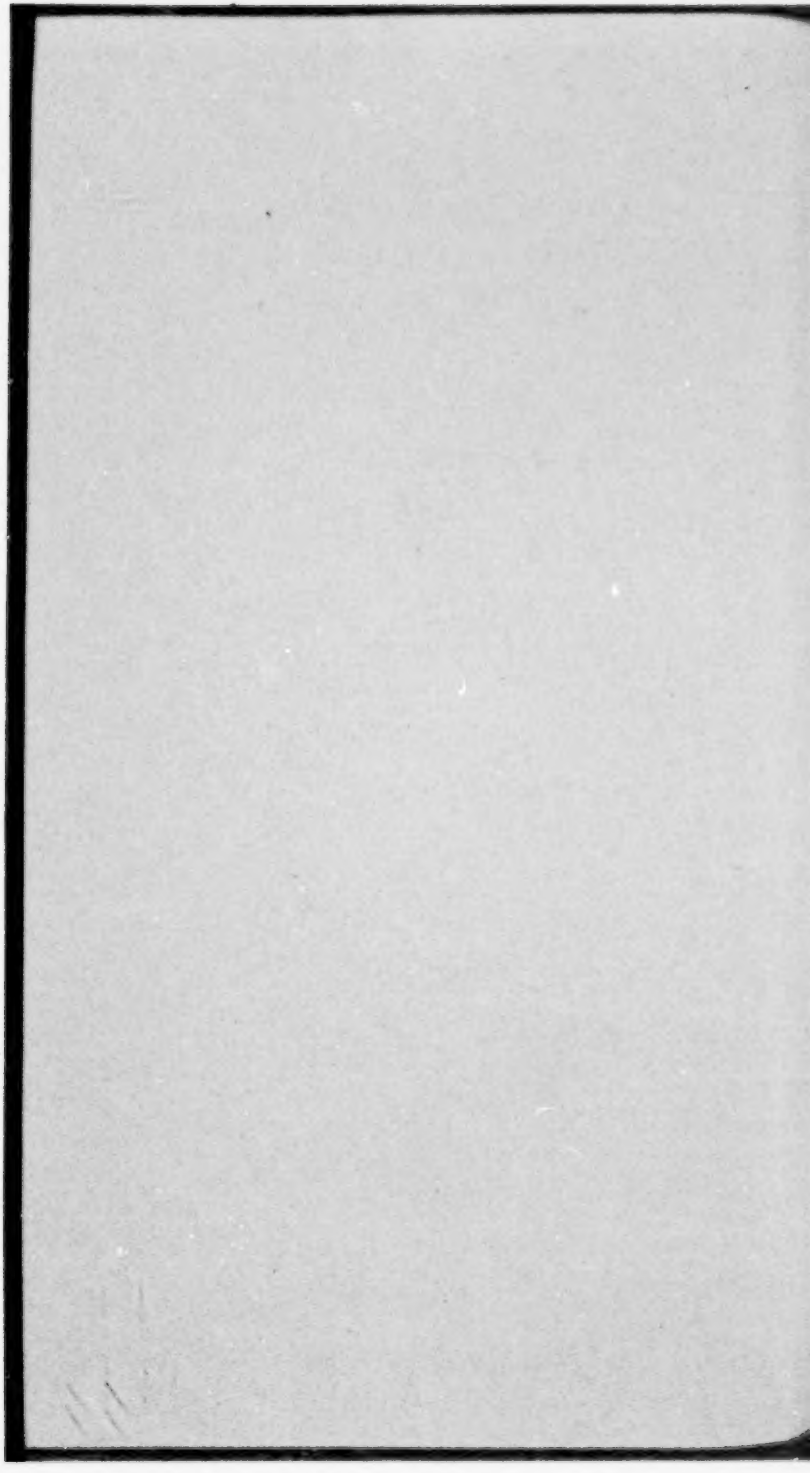

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 569

ANDERSON-PRICHARD OIL CORPORATION, A CORPORATION,

Appellant,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND REFORD BOND, RAY O. WEEMS AND RAY G. JONES, AS MEMBERS OF THE CORPORATION COMMISSION; SINCLAIR-PRAIRIE OIL AND GAS COMPANY, A CORPORATION, PHILLIPS PETROLEUM COMPANY, A CORPORATION, OKLAHOMA NATURAL GAS COMPANY, A CORPORATION, AND STANOLIND OIL AND GAS COMPANY, A CORPORATION,

Appellees

STATEMENT OF JURISDICTION

Pursuant to Paragraph 1 of Rule 12 of the Supreme Court of the United States, the Appellant above named files the following statement particularly disclosing the basis upon which Appellant contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment of the Supreme Court of Oklahoma in the case

of Anderson-Prichard Oil Corporation, Plaintiff in Error, vs. Corporation Commission of the State of Oklahoma, et al., Defendants in Error, No. 34283 on the docket of said court, dated October 2, 1951, and appealed from herein.

I. Statutory Provisions and Decisions Believed to Sustain Jurisdiction

The statutory provision believed to sustain the appellate jurisdiction is Section 1257, of Title 28, United States Code, which provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The following decisions sustain the jurisdiction of the Supreme Court of the United States to review the final judgment, decree and decision of the Supreme Court of the State of Oklahoma on direct appeal in this case: *Hunter Co.* v. *McHugh*, 320 U. S. 222; *Bandini Petroleum Company* v. *Superior Court*, 284 U. S. 8; *Henderson Co.* v. *Thompson*, 300 U. S. 258; *Thompson* v. *Consolidated Gas Utilities*, 300 U. S. 55; *Chicago, R. I. & P. Ry. Co.* v. *United States*, 284 U. S. 80, 96-97.

II. The Statutes of the State, the Validity of which is Involved

The statutes of the State of Oklahoma, the validity of which is involved, are as follows:

(a) Order No. 22506 of the Corporation Commission of Oklahoma, dated June 17, 1949, the pertinent provisions of which are as follows:

"*Findings*

"1. That this is the amended application of Anderson-Prichard Oil Corporation, for an order amending Order No. 20536, issued in Cause CD No. 1463 on the 30th day of October, 1947, so as to extend the West boundary line of the Pooler Zone in the Oklahoma Gas Field in order to increase the acreage factor of applicant's Thomas No. 1 well, in the NE/4 of SW/4 of Section 27, Township 5 North, Range 8 West, Grady County, Oklahoma.

* * * * * * *

"3. That under date of October 30, 1947, the Commission issued its Order No. 20536, providing for a formula for the allocation of gas production in the Pooler Zone of the Chickasha Gas Field, in which formula acreage was used as a factor in determining the allowable production of wells in that zone; that in said order, outside boundary limits were fixed for the Pooler Zone from which the acreage attributable to each well could be figured, and used, in the allocation formula; that at the time said Order No. 20536 was issued, the applicant was in process of completing the Thomas No. 1 well, located in the NE/4 of the SW/4 of Section 27, Township 5 North, Range 8 West, in the Chickasha Field, and knew at that time the well would be productive in the Pooler Zone.

"4. That the outside boundary lines fixed by said Order No. 20536 was a compromise line, giving consideration to the testimony of all witnesses in the case, including applicant's witness, A. H. Richards.

"5. That applicant drilled his Thomas No. 1 well in the center of the extreme Northeast 10 acres of the SW/4 of said 10 acres (said 10 acres should be "said Section 27"), presumably in the hopes of placing it-

self on better structural position; that had the applicant drilled in the center of the SW/4 of said section, it would be in a better position to urge to the Commission that the southwesterly boundary lines be extended so as to give it a higher acreage factor in the allocation formula.

"6. The Commission has, for many years, allocated the gas production in the Pooler Zone in this field on the acreage factor shown by Order No. 20537 (should be No. 20536) and to extend the westerly boundary line now, to the lease lines, as requested by applicant, would upset the proration formula and the basis of gas allocation that in the past has seemed fair to all interested parties; that to extend the boundaries now, to lease lines, would force the Commission, in order to be consistent, to extend the boundaries to the lease lines at other points on the structure and thereby adversely affect the correlative rights of those operators who are in the center of the structure and who have drilled their wells on 40 and 80 acre patterns; that Order No. 20536 should remain in full force and effect until further information is gained as to the probable outside limits of the Pooler Zone in the Chickasha Gas Field.

"7. That in the interest of securing the greatest ultimate production of gas from the pool and the protection of correlative rights of all interested parties, this application should be denied.

"Order

"It is therefore ordered by the Corporation Commission of Oklahoma that this application be and the same is hereby denied.

"Done and performed this 17 day of June, 1949."

A full, true and complete copy of said Order and the finding upon which the same is based is hereto attached as Appendix "A" and by reference made a part hereof.

Since Order No. 22506 is the denial of an application to

modify certain portions of Order No. 20536, and since this appeal is based on Order No. 22506, denying the modification sought, the pertinent provisions of Order No. 20536, which the Corporation Commission refused to modify, should be set forth herein and are as follows:

"*Findings*

* * * * * * *

"3. That the Commission has heretofore regulated the production of natural gas from the lower Charlson Sand of the Chickasha Gas Field by Order No. 17473, but—that the Glover Sand common source of supply has been discovered in the same field and as yet no formula has been fixed for the allocation of gas production from said sand, and it is necessary to regulate the production from that sand so as to protect the correlative rights of all interested parties and prevent waste; that the two other sands, being the Pooler and Mona, have also been discovered but the Commission is of the opinion that those two sands should be regulated as one common source of supply since they are now at least interconnected by drilling and that this zone should be designated as the Pooler Sand common source of supply; that a formula should be fixed at this time allocating the production from the Poler Sand common source of supply.

* * * * * * *

"*Order*

"It is therefore ordered by the Corporation Commission of Oklahoma as follows:

* * * * * * *

"4. That a map be attached hereto, marked Exhibit "C" and made a part hereof, showing the boundaries of the Pooler Sand common source of supply in the

Chickasha Gas Field, and the acreage attributable to all wells completed in said common source of supply.

* * * * * * *

"6. That each well producing from any one or all of the three common sources of supply shall have allocated to it each month as its ratable portion of the total taking of gas from either common source of supply, that proportion of the entire monthly production of said common source of supply as shall be reflected under the monthly calculation of the allocation formula; which allocation formula shall be 'productive acreage' times 'adjusted potential factor' times 'pressure factor' for each new well.

"7. Productive Acreage, as used in this Order, shall be such portion of the total acreage in the unit as is within the productive area of either of the three common sources of supply as shown by Exhibits "A", "B" and "C" attached hereto; provided however, that no well shall have an acreage factor in excess of 160 acres in either or all of the three common sources of supply; and in applying the allocation formula, only the productive acreage of each unit shall be considered.

"8. Acreage Factor for each well and for each common source of supply, shall be the number of productive acres assigned to it, all as shown by Exhibits "A", "B" and "C", attached hereto.

* * * * * * *

"17. Each well shall have its ratable share of the allocation set up by the Commission based on the allocation formula hereinabove prescribed. * * *

* * * * * * *

"19. Any well hereafter completed in any of the three zones, shall, upon completion in said separate source or sources of supply, be subject to all of the provisions of this order * * *."

The map, Exhibit "C", referred to in Order No. 20536, showing the acreage attributable to each well in the Pooler Zone, is the same as the map of the Pooler Zone which now appears in the record of the above case pending in the Supreme Court as a part of Exhibit 13, and is attached to Order No. 20536, which Order, together with the Exhibits thereto, is set forth in full in Appendix "B" hereto attached, and by reference made a part hereof; and the undisputed evidence, as appears from the record and the decision of the Supreme Court appealed from herein, is that 57 acres of the 160-acre tract on which Appellant had an oil and gas lease was the acreage placed inside the so-called western boundary of the Pooler Zone, and was therefore to become the acreage factor for the Thomas No. 1 Well when it was completed as a producer from the Pooler Zone.

Inasmuch as both Orders above referred to in effect make rules governing future operations, they are "legislative in character" and subject to the rules and principles by which the validity of statutes is determined. The Supreme Court of the United States in the cases of *John P. King Manufacturing Co.* v. *City Council of Augusta*, 277 U. S. 100; *Sultan Railway and Timber Co. and Eclipse Mill Co.* v. *Department of Labor and Industries of the State of Washington*, 277 U. S. 135; *Albert W. Hamilton* v. *Regents of the University of California*, 293 U. S. 245; *Livcoak Water Users Association* v. *Railroad Commission*, 269 U. S. 354, holds that a legislative order of a state administrative body, such as the Corporation Commission of Oklahoma, is "a statute" of a state within the meaning of the statute of the United States giving the Supreme Court jurisdiction on appeal where there is drawn in question "the validity of a statute of any state."

(b) Section 239, Title 52 Oklahoma Statutes 1941 (Sec. 4,

Chap. 197, Oklahoma Session Laws 1915), insofar and to the extent that said statute is held to authorize Corporation Commission Order No. 22506.

This statute was enacted primarily for the prevention of waste, and authorized the Corporation Commission to enforce ratable taking, not only to prevent waste, but to protect the interests of the public and of all having the right to produce from a common source of supply, having due regard to the acreage drained by each well. The pertinent language of Section 239, Title 52 Oklahoma Statutes 1941, held by the Supreme Court of Oklahoma to authorize Order No. 22506, is as follows:

> "Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; * * *."

"Waste" as used in said statute is a term defined by Section 2 thereof, Section 239, Title 52 O.S. 1941, to mean:

> "The term waste, as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas."

There is no question pertaining to waste involved herein, as the undisputed facts and evidence in the record will show.

III. Date of Judgment, Denial of Petition for Rehearing, and Denial of Petition for Leave to File Second Petition for Rehearing.

The judgment appealed from was entered on the 2nd day of October, 1951 (not yet officially reported), copy of which is attached hereto as Appendix "C". Application of Appellant for a rehearing thereof was filed October 16, 1951, and was denied by the Supreme Court of Oklahoma October 23, 1951. On October 29, 1951, within the time prescribed by the rules of the Court, Appellant filed application for leave to file its second petition for a rehearing thereof, which application was denied by the Court on November 6, 1951. The rules of the Supreme Court, with respect to these petitions for rehearing, are attached hereto as Appendix "D" and made a part hereof by reference.

IV. Date of Petition for Appeal

Petition for appeal to this Court was presented to the Honorable Chief Justice of the Supreme Court of Oklahoma on the 8th day of January, 1952, and within ninety (90) days from the final judgment, decree and decision sought to be reviewed herein, which judgment became final on October 23, 1951, when the Supreme Court of Oklahoma denied petition for rehearing.

V. Nature of Case and Ruling of the Court Bringing the Case within the Jurisdictional Provisions Relied on

The judgment of the Supreme Court of Oklahoma from which this appeal is taken was on direct appeal by Appellant to that court from Order No. 22506 of the Corporation Com-

mission issued June 17, 1949, which denied Appellant's application to the Corporation Commission for an order modifying Order No. 20536, issued by the Corporation Commission October 30, 1947. The Corporation Commission, in Order No. 20536, established the so-called western boundary line of the Pooler Zone so as to place on the outside thereof 103 acres of the 160-acre tract of land covered by Appellant's oil and gas lease and on the inside of said Zone 57 acres of said tract, the same being the acreage upon which the Appellant's Thomas No. 1 Well was located, and by thus establishing the so-called western boundary line of the Pooler Zone the result was, and it was so declared in the Order, that 57 instead of 160 would be used as the acreage factor in the formula for the allocation and apportionment of gas which could be produced from the Pooler Zone through the Thomas No. 1 Well, if and when it ever proved to be a producer of gas from this Zone. Order No. 22506 was the result of the application, filed by Appellant after its Thomas No. 1 Well proved to be productive of large quantities of gas, to modify Order No. 20536, as to the location of the so-called western boundary line of the Pooler Zone so all the 160-acre tract would come within the Zone and so that Appellant would get the full benefit of its lease, covering the 160-acre tract of land, by having established 160 instead of only 57 as the acreage factor to be used in the formula provided in Order No. 20536 for the allocation and apportionment of gas which could be produced from the Pooler Zone through the Thomas No. 1 Well.

Much of the undisputed factual situation which obtained prior to and at the time Order No. 20536 was issued, and at the time Order No. 22506 was issued, is substantially as set forth in the opinion of the Supreme Court of Oklahoma, rendered October 2, 1951, in the following language:

> "The Chickasha Gas Field is located in Grady County, Oklahoma. It has three distinct sands, or

zones, from which it produces gas in commercial quantities. The deepest sand is called the Pooler zone, sometimes referred to as the Mona Sand, and above it are the Glover and Charlson zones. Production from each of these three zones may be had from a single well. Anderson-Prichard Oil Corporation is the owner of a lease covering the SW/4 of sec. 25-5-8W, and on the date of the order here complained of it had completed its well, known as the Thomas No. 1, on the northeast ten acres of its 160 acres, into the Glover and Charlson zones, and had drilled this well into the Pooler zone, but had not completed it. The tests made indicated it would be a producer from the Pooler zone.

"On October 30, 1947, the Corporation Commission of Oklahoma entered its order No. 20536, providing a formula for the allocation of gas production from the three producing zones above named. The express purpose of this order was to provide for ratable taking, to prevent waste and to protect the interests of all parties concerned. This order provided for an acreage factor in the allocation formula, and that such acreage factor should be the number of 'productive acres' assigned to each well in either or all three producing zones, or common sources of supply, in this field, and that no well should have an acreage factor in excess of 160 acres. Anderson-Prichard's Thomas No. 1 was not Completed as a producer in the Pooler zone until September, 1948, when it was found to have a daily potential production of 23.4 MCF of gas.

"Order No. 20536 fixed the acreage factor of Anderson-Prichard's Thomas No. 1 well at 57 acres, for the reason that the commission found that the western boundary of the Pooler zone included only 57 acres of the 160-acre lease of Anderson-Prichard, and under the allocation formula mentioned above only productive acres could be considered as an acreage factor. No wells had been drilled west of the Thomas No. 1 in that area to prove definitely the western boundary of the Pooler zone, and the Commission admitted that the western boundary line of the Pooler zone, as found and

fixed by it, was a 'compromise line', indicating a lack of certainty as to the exact location of the western limits of the zone in that area.

"After its completion of Thomas No. 1 as a producer in the Pooler zone, Anderson-Prichard filed an application with the Corporation Commission, seeking to amend Order No. 20536 in such manner as to give Anderson-Prichard as an acreage factor its entire lease of 160 acres, and thereafter amended its application seeking a change in the western boundary line of the Pooler zone so that it would extend far enough in a westerly direction to include all of the Anderson-Prichard lease of 160 acres. * * * *

"On June 17, 1949, the commission issued Order No. 22506, denying Anderson-Prichard's application, and leaving its acreage factor at 57, as fixed by Order No. 20536. This appeal is from Order No. 22506."

However, there are many other undisputed facts shown in the record and not shown in the above mentioned opinion, which are equally as important and necessary to bear in mind in determining the controlling questions involved as those above quoted, which we now set forth.

At the time the Corporation Commission determined to exercise such authority over the Chickasha Gas Field and the production therefrom, as is disclosed in its Order No. 20536, much of the Field had been substantially developed for gas and the owners of a number of leases in the Field had wells producing gas from the Pooler Zone located at such places on the various leases as the owners desired, since there was no restriction as to the location of wells, and Appellant exercised a similar discretion in locating its Thomas No. 1 Well as the owners of other leases in the Field had exercised in locating their wells. The undisputed factual situation being as above described, the effect of Order No. 20536, as conclusively appears therefrom, was to superimpose a well-spacing order over the Field which

had been previously substantially developed and which in effect fixed the drilling unit in said Field at 160 acres, limited to one well on each 160 acres, resulting in the establishment of 160 as the maximum acreage factor to be used in the allocation and apportionment of gas which might be produced from any well, because it was considered and determined that one well on each 160-acre tract would adequately drain the gas therefrom.

A futher undisputed fact, as shown by the record, is that, prior to the time the Corporation Commission issued its Order No. 22506 and Order No. 20536, or either of them, Appellant had secured the oil and gas lease covering the 160-acre tract of land and had developed the same at great expense by drilling its Thomas No. 1 Well thereon into the highly productive Pooler Zone, and that, by reason thereof, as the Supreme Court of Oklahoma held in its opinion dated October 2, 1951, in line with its previous decisions in *Brennan* v. *Hunter*, 68 Okla. 112, 172 Pac. 49, and *Woodworth* v. *Franklin*, 85 Okla. 27, 204 Pac. 452, Appellant had become the owner of a vested estate and vested property rights in the lease covering the entire 160-acre tract; and owing to the further undisputed fact, as shown by the record, that the Thomas No. 1 Well had a thicker sand body in it than any well in the Field and was one of the most highly productive wells in the Field, the lease and Appellant's vested estate therein were of great value.

The action of the Corporation Commission, by its Order No. 22506, refusing to modify Order No. 20536 in the manner sought as above set forth, in effect definitely fixed the so-called western boundary line of the Pooler Zone in the Chickasha Gas Field so as to deprive Appellant of the benefit of the vested estate and vested property rights in its oil and gas lease insofar as the lease covered 103 acres of the 160 acres included therein, by determining that only

57 acres of the land covered by the lease were within the so-called western boundary line of the Pooler Zone, thus definitely fixing 57 instead of 160 as the acreage factor to be used in the allocation and apportionment of gas which could be produced from the Pooler Zone through the Thomas No. 1 Well, as though Appellant had a lease covering only 57 acres of land. And the Appellant, being deprived of its valuable vested estate and vested property rights in the manner set forth and to the extent thereof, in due time, and as authorized by the laws of the State of Oklahoma, appealed to the Supreme Court of the State from said Order No. 22506.

The Appellant, in its Assignment of Errors on appeal to the Supreme Court of the State of Oklahoma, in its briefs in the Supreme Court of Oklahoma, in its Petition for Rehearing before said Court, and in its Petition for Leave to File Its Second Petition for Rehearing, and in its Assignment of Errors on appeal to this Court, has repeatedly assigned as error and contended, among other things, that Order No. 22506, and that Section 239, Title 52 Oklahoma Statutes 1941, insofar as it authorizes said Order, are repugnant to the Constitution and laws of the United States in the respects which are particularly set forth in the Assignment of Errors on appeal to this Court, which, being predicated on undisputed facts, in itself constitutes a statement clearly showing the grounds upon which Appellant contends the Federal questions involved as substantial, and, for the convenience of the Court, the Assignment of Errors is here set out at length, except as noted, namely:

"Assignment of Errors.

"1. The Supreme Court of Oklahoma erred in holding that Order No. 22506 does not deprive Appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States because before the Cor-

poration Commission took jurisdiction to exercise its police power over the Chickasha Gas Field and before the Corporation Commission issued Order No. 22506, the subject of this appeal, and Order No. 20536, incidentally involved in this appeal, Appellant had secured an oil and gas lease covering 160 acres of land located in said Field and had developed the lease by drilling thereon, at great expense, into the Pooler Zone a highly productive gas well, known as Thomas No. 1 Well, and by securing and thus developing the lease, Appellant had become the owner of a vested estate and vested property rights in said lease covering the 160-acre tract, and thereafter the Corporation Commission issued Order No. 22506, which, in effect, definitely fixed the so-called western boundary line of the Pooler Zone in said Field, so as to place on the outside thereof 103 acres of the land covered by Appellant's lease, and to place on the inside thereof 57 acres covered by Appellant's lease, the same being the portion of the land on which the Thomas No. 1 Well was located, and by thus dealing with Appellant's lease, the effect of Order No. 22506 was to deprive Appellant of its vested estate and vested property rights, and the benefits thereof, in its oil and gas lease, insofar as it covered 103 acres since, in effect, it definitely fixed 57 instead of 160 as the acreage factor to be used in the formula for the allocation and apportionment of gas which could be produced from Appellant's Thomas No. 1 Well, as though Appellant had a lease covering only 57 acres instead of 160 acres, and to deprive Appellant of the benefit of 160 as the maximum acreage factor to be used in the Chickasha Gas Field in the allocation and apportionment of gas, prescribed in Order No. 20536, because it was considered that one well would adequately drain the gas from 160 acres.

"2. The Supreme Court of Oklahoma erred in holding that Order No. 22506 does not deprive Appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because the action of the

Corporation Commission, effectuated by the Order, is an unreasonable, arbitrary, capricious and unlawful exercise of the police power under the guise of regulation and the protection of correlative rights, in that Order, in effect, annihilates Appellant's vested estate and vested property rights in a developed oil and gas lease covering a 160-acre tract of land insofar as the lease covers 103 acres thereof, and deprived the Appellant of the lease on the 103 acres, and the benefits thereof, thus, in effect, leaving Appellant a lease covering only 57 acres instead of 160 acres, or approximately a 35% gas well instead of a 100% gas well.

"3. The Supreme Court of Oklahoma erred in holding that Order No. 22506 does not deprive Appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because the Order, by definitely fixing, in effect, 57 instead of 160 as the acreage factor to be used in the formula for the allocation and apportionment of gas which can be produced from the Pooler Zone through Appellant's Thomas No. 1 Well, annihilates Appellant's developed oil and gas lease, which covers the 160-acre tract of land, and deprives the Appellant thereof, insofar as the lease covers 103 acres of the 160-acre tract, and vests the same and the benefits thereof in other owners of wells in the Chickasha Gas Field.

"4. The Supreme Court of Oklahoma erred in holding that Order No. 22506 does not deprive Appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because the Order, by definitely fixing 57 instead of 160 as the acreage factor to be used in the formula for the allocation and apportionment of gas which can be produced from the Pooler Zone through Appellant's Thomas No. 1 Well, takes away from Appellant its vested estate in the oil and gas lease covering the 160-acre tract, insofar as the lease covers 103 acres thereof, and vests the title to the same and the benefits thereof in other owners of gas wells

in said Gas Field by decreasing the amount of gas which may be produced from Appellant's Thomas No. 1 Well in the proportion that 103 acres bears to 160 acres and increasing by like amount the gas which may be produced through the wells owned by others in the Field.

"5. The Supreme Court of Oklahoma erred in holding that Order No. 22506 does not deny to Appellant the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because said Order, in effect, requires the Appellant to drill additional wells at enormous expense to prove the productivity of the entire 160-acre tract covered by its lease as a prerequisite to its obtaining the benefit of 160 as the maximum acreage factor to be used in the formula provided in Order No. 20536 for the allocation and apportionment of gas which may be produced from the Pooler Zone through Appellant's Thomas No. 1 Well, whereas no requirement to drill more than one well on each 160 acres is made of other owners of oil and gas leases in said Field; and this unreasonable and discriminatory requirement is made of Appellant in face of the fact that it was determined by the Corporation Commission in Order No. 20536 that one well to each 160 acres was sufficient to adequately drain the gas therefrom and that, in the allocation and apportionment of gas which can be produced from any well, only one well on each 160 acres shall be taken into consideration or used."

The errors assigned attacking the constitutionality of Section 239, Title 52 O. S. 1941, being five in number, are not here set forth in the language thereof, but such assigned errors are substantially as follows: The Supreme Court of Oklahoma erred in holding that Section 239, Title 52 O. S. 1941, to the extent that said law was held to authorize Order No. 22506 of the Corporation Commission, does not contravene and violate the provisions of the Fourteenth Amendment to the Constitution of the United States here-

inabove referred to, for the same reasons that the order, as found to be authorized thereby, contravenes such constitutional provisions, all as set out in the quoted paragraphs numbered 1 to 5 above.

The ruling of the Supreme Court of Oklahoma was such as to bring the case within the jurisdictional provisions relied upon in that its decision was in favor of the validity of the order complained of and and the statute under which the Court said the order was authorized, the validity of which was drawn into question on the ground of being repugnant to the above cited provisions of the Fourteenth Amendment to the Constitution of the United States.

The Court, in its decision of October 2, 1951, in discussing the constitutional questions raised against the statute by Appellant, in the event it should be construed as granting authority to the Corporation Commission to issue the orders involved, called attention to the fact that Section 239 vested the Corporation Commission with power to regulate the taking of gas from "any common source of supply so as to protect the interests of all those having the right to produce therefrom."

Later in the decision, the Court quoted from its own decision in *Russell* v. *Walker*, 160 Okla. 145, 15 P. 2d 114, where it is said:

> "Under the police power of the state, the Legislature may regulate and restrict the use and enjoyment of landowners of the natural resources of the state, such as oil and gas, so as to protect them from waste, and prevent the infringement of the rights of others. Such legislation does not infringe the constitutional inhibitions against taking of property without due process of law, denial of the equal protection of the laws, or taking property without just compensation."

And then quoted the following from 2 Constitutional Limitations (8th Ed.), Pages 1319-1320:

"* * * Such legislation does not infringe the constitutional inhibitions against the taking of property without due process of law, denial of equal protection of the laws, or taking without just compensation."

After discussing Order No. 22506 in the light of the statute, the Supreme Court of Oklahoma said:

"* * * we have concluded that the order appealed from is lawful, is supported by competent and substantial evidence, and does not deprive Anderson-Prichard of any constitutional right; and the order of the Commission is therefore affirmed."

A further and second adverse ruling and decision of the Supreme Court of Oklahoma on the constitutional questions involved was made by the Court on October 23, 1951, when it denied Appellant's petition for rehearing in which the constitutional questions were raised against both Section 239, 52 O. S. 1941, and Order No. 22506.

Thus, the Federal questions raised against the statute as construed and applied and against Order No. 22506 were decided adversely to the contention of Appellant and in favor of the constitutionality of the statute and the Order of the Corporation Commission.

VI. The Manner in which Federal Questions were Raised

The Federal questions thus presented were raised by Appellant in its Assignment of Errors in its Petition in Error to the Supreme Court of Oklahoma in the following language:

"5. That the action of the Corporation Commission in denying the amended application of Anderson-Prichard Oil Corporation was arbitrary and is without foundation either in fact or in law.

* * * * * * *

"7. That the action of the Corporation Commission in denying the said amended application of Anderson-Prichard Oil Corporation was in substance and effect tantamount to given other producers of gas from the Pooler Zone in the Chickasha Gas Field an unjust and unfair advantage over said applicant and thereby improperly and unlawfully greatly discriminating against said applicant in the distribution of gas in the Pooler Zone underlying said field, in that said action improperly and unlawfully gives other producers of gas from the Pooler Zone more gas than they are properly and legally entitled to produce, and gives applicant less gas than it is properly and legally entitled to produce.

"8. That the action and order of said Corporation Commission in denying said amended application and thereby preventing applicant, Anderson-Prichard Oil Corporation, from producing its pro rata portion of the gas from said Pooler Zone, are in derogation and violation of the Statutes and Laws of the State of Oklahoma, which protect the correlative rights and equities of all persons producing oil and gas from the same Common Source of Supply.

* * * * * * *

"10. That the action and order of the said Commission in denying said amended application and thereby preventing said applicant, Anderson-Prichard Oil Corporation, from producing its pro rata portion of the gas from said Pooler Zone, are in violation of the due process of law clause contained in the Fourteenth Amendment to the Constitution of the United States.

"11. That the action and order of said Commission in denying said amended application and thereby preventing said applicant, Anderson-Prichard Oil Corporation, from producing its pro rata portion of the gas from said Pooler Zone, are a denial to said Anderson-Prichard Oil Corporation equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States."

In Appellant's original brief, filed before the Supreme Court of Oklahoma, and before anything had transpired either before the Corporation Commission or before the Supreme Court, other than some mere intimations which led to the thought that it might be contended that Section 239, Title 52 O. S. 1941, would be relied on for authority of the Corporation Commission to issue the orders involved, Appellant pointed out that, if the statute should be given such a construction, it would bring the statute in contravention of the Fourteenth Amendment to the Constitution. This contention was also made in an oral argument before the Supreme Court. Then, after the Supreme Court rendered its opinion on the 2nd day of October, 1951, definitely holding, to the surprise of Appellant, that the statute vested authority in the Corporation Commission to issue Orders No. 22506 and No. 20536, which was the first construction of this nature placed upon this statute by the Supreme Court, although the statute had been in force and effect in Oklahoma since March 30, 1915 (Sec. 4, Chap. 197, Session Laws of Oklahoma 1915), or for a period of more than thirty-six years, Appellant in its petition for rehearing, which was filed in due time and in accordance with the rules of the Supreme Court of Oklahoma, pointed out the unconstitutionality of said Section 239, as construed and applied, in the following language:

> "1. That said decision overlooked well established governing principles of law and questions decisive of the case, duly submitted by counsel, in that:
>
> "a. When the Court determined in its opinion in the instant case that Section 239 authorized the Corporation Commission to take the action complained of herein with reference to the Anderson-Prichard-Thomas lease and the well located thereon, the action taken being the annihilation, destruction and confiscation of a vested estate and vested property rights, the Court overlooked the fact that such a statute, attempt-

ing to vest the corporation Commission with such authority, is unconstitutional, because it violates the due process clause of the Constitution of Oklahoma, and the Fourteenth Amendment to the Constitution of the United States; and denies to Anderson-Prichard Oil Corporation the equal protection of the laws guaranteed by the Fourteenth Amendment; and that by reason of the unconstitutionality of the statute and the consequent illegal and void acts of the Corporation Commission, predicated thereon, the action of the Corporation Commission should be reversed and declared to be illegal, null and void.

* * * * * * *

"c. Any attempt on the part of the Corporation Commission, in such cases as above specified, to reduce the acreage factor to any figure less than 160 could be nothing less than an unauthorized and an arbitrary attempt to confiscate and take from Anderson-Prichard Oil Corporation a vested estate and vested property rights, in violation of the due process clause of the Constitution of Oklahoma, and the Fourteenth Amendment to the Constitution of the United States; and also denied to Anderson-Prichard Oil Corporation the benefit of the equal protection clause of the said Fourteenth Amendment."

A copy of the petition for rehearing and the pertinent portions of Appellant's brief filed in support thereof are attached hereto as Appendix "E" and made a part hereof.

The Supreme Court, after considering the petition for rehearing and the brief filed in support thereof, issued its order Sheet dated October 23, 1951, which contained the following statement:

"The clerk is hereby directed to enter the following order:

34,283—Anderson-Prichard Oil Corp. vs. Corp. Comm. of the State of Okla., et al. Petition for rehearing and oral argument in the above case denied."

The same constitutional points were again presented to the Court in Appellant's application for leave to file second petition for rehearing and the brief in support thereof, the brief being substantially the same as the brief attached hereto as a part of Appendix "E".

The Supreme Court, after considering the application for leave to file the second petition for rehearing, issued its Order Sheet dated November 6, 1951, which contained the following statement:

> "The clerk is hereby directed to enter the following order:
>
> 34,283—Anderson-Prichard Oil Corp. vs. Corp. Comm. of the State of Okla., et al. Application for leave to file second petition for rehearing denied."

VII. The Federal Questions Involved are Substantial

The Federal questions on this appeal are substantial for the reasons and upon the grounds stated in sub-heads I, II and V of this Statement of Jurisdiction; and for the further reasons now set forth, predicated on the undisputed facts and the authorities Appellant shall now cite defining appellant's rights.

Before the Corporation Commission determined to exercise such jurisdiction and authority over the Chickasha Gas Field, as is disclosed in the Orders of the Corporation Commission involved herein, the field had been substantially developed for gas, and Appellant had purchased an undeveloped oil and gas lease covering a 160-acre tract of land and had developed it by drilling a highly producing gas well thereon, and by reason thereof Appellant had become the owner of a vested estate and vested property rights in this lease and its Thomas No. 1 Well located thereon, as shown by the decisions of the Supreme Court of Oklahoma in the following cases: *Brennan* v. *Hunter*, 68 Okla. 112, 172 P.

49; *Woodworth* v. *Franklin*, 85 Okla. 27, 204 P. 452; and the Court's opinion in this case, dated October 2, 1951, shown in Appendix "C" hereto attached.

The owner of such a vested estate in Oklahoma is entitled to the following rights and privileges as set forth in a decision of the Supreme Court of Oklahoma in *H. F. Wilcox Oil & Gas Co.* v. *Bond*, 173 Okla. 348, 48 P. 2d 820, where the Court said:

> "It is a rule of property in this state, except as modified by a proper exercise of the police power, that * * * a lessee for oil and gas purposes, becomes the owner of all the oil and gas that he may produce from his wells, whether the oil and gas originally inhabited his own land or were drained from neighboring lands."

And in *Gruger* v. *Phillips Petroleum Co.*, 192 Okla. 259, 135 P. 2d 485, the Supreme Court of Oklahoma again stated the rule as follows:

> "The law of capture, under which oil and gas is owned by the one lawfully reducing it to possession, still obtains in Oklahoma, except as it has been or may be regulated or restricted under laws passed in the exercise of the police power, such as the proration and spacing statutes and city zoning ordinances."

While a vested estate in the State of Oklahoma is subject to a reasonable exercise of the police power of the State, as above set forth, yet such an estate cannot be annihilated under the guise of regulation, protection of correlative rights, or for any other reason. *Oklahoma Natural Gas Co.* v. *Choctaw Gas Co.*, decided by the Supreme Court of Oklahoma, September 18, 1951, 22 Okla. Bar Journal, p. 1277, not yet officially reported; *Grison Oil Company* v. *Corporation Commission*, 186 Okla. 548, 99 P. 2d 134; *Peppers Refining Co.* v. *Corporation Commission*, 198 Okla. 451, 179 P. 2d 899.

Notwithstanding Appellant's rights in its oil and gas lease and its Thomas No. 1 Well located thereon, as defined by the above cases and the additional cases which will now be cited, the Corporation Commission, under the guise of protecting correlative rights, superimposed what in effect was a well-spacing order over this developed gas field, in which the unit of development was fixed at 160 acres, limited to one well on each unit, because one well was considered sufficient to adequately drain the gas therefrom, and although Appellant owned at the time a lease which covered 160 acres, on which it had drilled its highly productive Thomas No. 1 Well, yet the Corporation Commission in its Order undertook to establish, and did establish, a so-called boundary line of the Pooler Zone, and the so-called western boundary line of the Pooler Zone was located so as to place 103 acres of the land covered by Appellant's developed lease on the outside of the zone, and by this action Appellant's lease was, in effect, reduced to only a 57 acre lease, as though its lease covered only 57 acres instead of 160 acres, which was tantamount, when the acreage factor for the Field was applied, to giving Appellant the benefit of only a 35% well instead of a 100% well, and the 65% of the Thomas No. 1 Well which was taken from Appellant in the manner stated and the benefits thereof were given to the owners of other wells in the Field.

What has been done in this case can be appropriately described that the language of the Court in *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, 79-80, when it said:

> "Our law reports present no more glaring instance of the taking of one man's property and giving it to another. * * * And this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."

Also, the following cases condemn what has been done in this case and show the substantial nature of the Federal questions involved and Appellant's right to relief: *Atlantic Coast Line Railroad* v. *North Carolina Corp. Comm.*, 206 U. S. 1, 20; *Chicago R. I. & P. R. Co.* v. *United States*, 284 U. S. 80 96; *Chicago M. & St. P. R. Co.* v. *State of Minn.*, 134 U. S. 418, 456; *Dobbins* v. *City of Los Angeles*, 195 U. S. 223; *Oklahoma City* v. *Dolese Bros.*, 48 F. 2d 750.

Furthermore, the Supreme Court of Oklahoma in its decision and judgment rendered October 2, 1951 committed error and denied to Appellant the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States when it approved and affirmed Order No. 22506 of the Corporation Commission (Appendix "A" hereof), because said Order was predicated on the following main controlling facts as found and set forth in the order itself:

> "4. That the outside boundary lines fixed by said order No. 20536 was a compromise line, giving consideration to the testimony of all witnesses in the case, including applicant's witness, A. H. Richards.
>
> "5. That applicant drilled his (its) Thomas No. 1 well in the center of the extreme Northeast 10 acres of the SW/4 of said 10 acres (Section 27), presumably in the hopes of placing itself on better structural position; that had the applicant drilled in the center of the SW/4 of said section, it would be in a better position to urge to the Commission that the southwesterly boundary lines be extended so as to give it a higher acreage factor in the allocation formula.
>
> "6. * * * that Order No. 20536 should remain in full force and effect until further information is gained as to the probable outside limits of the Pooler Zone in the Chickasha Gas Field",

which finding of fact by the Corporation Commission is tantamount to making the unreasonable, arbitrary and

discriminatory requirement of Appellant that it drill other wells on its lease, at a great and useless expense, as a condition precedent to its securing an increase in its acreage factor, whereas no requirement to drill more than one well on each 160 acres is made of other owners of oil and gas leases in said field. And this unreasonable, arbitrary and discriminatory requirement is made of Appellant in face of the fact that it was determined by the Corporation Commission in Order No. 20536 that one well to each 160 acres was sufficient to drain adequately the gas therefrom and that, in the allocation and apportionment of gas which can be produced from any well, only one well on each 160 acres shall be taken into consideration or used.

It will be observed, and Appellant believes that it is important to keep in mind, that when Appellant drilled its Thomas No. 1 Well into the Pooler Zone, any owner of an oil and gas lease was free to drill a well at any place on its lease that it desired, and a number of other lease owners had exercised this right and had drilled wells on their leases at various places of their own choosing. Moreover, it was after the drilling and development just described that the Corporation Commission assumed jurisdiction over the Field and superimposed its Order No. 20536 and Order No. 22506 over the same, and the Orders were in effect retroactive well-spacing orders superimposed over the developed gas field, establishing the so-called boundary line of the Pooler Zone, with the devastating effect upon Appellant's vested estate and vested property rights hereinabove particularly pointed out.

Such unreasonable, arbitrary and discriminatory action on the part of the Corporation commission was condemned by the Supreme Court of the United States in *Frost* v. *Corp. Comm.*, 278 U. S. 515; *Louisville Gas & Electric Co.* v. *Coleman*, 277 U. S. 32.

Since the Supreme Court of Oklahoma has, in its opinion

in this case dated October 2, 1951 (Appendix "C" hereof), construed Section 239, Title 52 O. S. 1941, as granting authority to the Oklahoma Corporation Commission to issue Orders No. 22506 and No. 20536, and has upheld the constitutionality of the statute as thus construed, and has held that Orders No. 22506 and No. 20536 were lawful and applied to Appellant situated as it was, notwithstanding the constitutional objections which have been pointed out and urged against their validity, the whole question of the validity of Order No. 22506 and the statute said to authorize the same, as related to Appellant, and whether Appellant is to be greatly and irreparably damaged by the devastating effect of said statute and said Order, depends upon the decision of the Federal questions thus presented. And the far-reaching effect of the decision, taking into consideration that it is believed to be the first case of its kind to be decided by any court and to be of such nature as to affect the public interest, greatly augments the importance of the questions involved.

It is therefore respectfully submitted that the Supreme Court of the United States has jurisdiction of this appeal under Section 1257, Title 28, United States Code.

Dated this the 8th day of January, 1952.

W. H. Brown,
Paul G. Darrough,
Virgil R. Ball,
719 Apco Tower,
Oklahoma City, Oklahoma;
Solus S. Brooks,
925 Apco Tower,
Oklahoma City, Oklahoma,
Attorneys for Appellant.

APPENDIX "A"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 2019

Order No. 22506

In the Matter of the Application of Anderson-Prichard Oil Corporation for an Order Amending Order No. 20536, Issued in Cause CD No. 1463 on the 30th Day of October, 1947, So That, In Making Allocation of the Amount of Natural Gas Which May Be Produced from the Pooler Zone Through Applicant's Thomas No. 1 Well, Located in the NW/4 SW/4 Section 27-5N-8W, in the Chickasha Field, There Shall Be Used the Maximum Acreage Factor Authorized in the Formula for Allocation of Gas in Said Field, Instead of Only 57 Acres, as Now Provided in Said Order.

Report of the Commission

This cause came on for hearing before the Corporation Commission of Oklahoma, on the 27th day of April, 1949, at 10 o'clock, a.m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Ray O. Weems, Vice-Chairman, and Ray C. Jones, Commissioner, sitting. W. H. Brown appeared for the applicant, Anderson-Prichard Oil Corporation; G. D. Almen, Jr. appeared for Sinclair Oil & Gas Company, Cecil C. Hamilton appeared for the Phillip Petroleum Company, T. H. Eskridge appeared for the Oklahoma Natural Gas Company, R. O. Mason appeared for Stanolind Oil & Gas Company.

The Commission, after hearing the cause, took the matter under advisement and now on this the 17th day of June, 1949, being in executive session, the Commission is of the opinion that the application should be denied and therefore finds as follows:

Findings

1. That this is the amended application of Anderson-Prichard Oil Corporation, for an order amending Order No. 20536, issued in Cause CD No. 1463 on the 30th day of October, 1947, so as to extend the West boundary line of the Pooler Zone in the Oklahoma Gas Field in order to increase the acreage factor of applicant's Thomas No. 1 well, in the NE/4 of the SW/4 of Section 27, Township 5 North, Range 8 West, Grady County, Oklahoma.

2. That this Commission has jurisdiction over the subject matter herein, that notice has been given in all respects as required by law, and that protests have been made to the granting of the application.

3. That under date of October 30, 1947, the Commission issued its Order No. 20536, providing for a formula for the allocation of gas production in the Pooler Zone of the Chickasha Gas Field, in which formula acreage was used as a factor in determining the allowable production of wells in that zone; that in said order, outside boundary limits were fixed for the Pooler Zone, from which the acreage attributable to each well could be figured, and used, in the allocation formula; that at the time said Order No. 20536 was issued, the applicant was in process of completing the Thomas No. 1 well, located in the NE/4 of the SW/4 of Section 27, Township 5 North, Range 8 West, in the Chickasha Field, and knew at that time the well would be productive in the Pooler Zone.

4. That the outside boundary lines fixed by said order No. 20536 was a compromise line, giving consideration to the testimony of all witnesses in the case, including applicant's witness, A. H. Richards.

5. That applicant drilled his Thomas No. 1 well in the center of the extreme Northeast 10 acres of the SW/4 of said 10 acres, presumably in the hopes of placing itself on better structural position; that had the applicant drilled in the center of the SW/4 of said section, it would be in a better position to urge to the Commission that the southwesterly boundary lines be extended so as to give it a higher acreage factor in the allocation formula.

6. The Commission has, for many years, allocated the

gas production in the Pooler Zone in this field on the acreage factor shown by Order No. 20537 and to extend the westerly boundary line now, to the lease lines, as requested by applicant, would upset the proration formula and the basis of gas allocation that in the past has seemed fair to all interested parties; that to extend the boundaries now, to lease line, would force the Commission, in order to be consistent, to extend the boundaries to the lease lines at other points on the structure and thereby adversely affect the correlative rights of those operators who are in the center of the structure and who have drilled their wells on 40 and 80 acre patterns; that Order No. 20536 should remain in full force and effect until further informations is gained as to the probable outside limits of the Pooler Zone in the Chickasha Gas Field.

7. That in the interest of securing the greatest ultimate production of gas from the pool and the protection of correlative rights of all interested parties, this application should be denied.

Order

It Is Therefore Ordered by the Corporation Commission of Oklahoma that this application be and the same is hereby denied.

Done and performed this 17 day of June, 1949.

Corporation Commission of Oklahoma.

(S.) Reford Bond,
Chairman;
(S.) Ray O. Weems,
Vice-Chairman;
(S.) Ray C. Jones,
Commissioner.

Attest:
Tom McMurray.

APPENDIX "B"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1463

Order No. 20536

IN THE MATTER OF THE APPLICATION OF WALKER T. POUND, DIRECTOR OF CONSERVATION FOR AN ORDER AMENDING ORDER NO. 17473, ISSUED IN CAUSE CD NO. 903, SO AS TO PROVIDE FOR A DIFFERENT FORMULA TO BE USED IN THE ALLOCATION OF NATURAL GAS PRODUCTION IN THE CHICKASHA GAS FIELD

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of Oklahoma, on the 24th and 25th of September, 1946, in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, and Ray C. Jones, Commissioner, sitting. The following appearances were entered: W. H. Brown, Attorney for Anderson-Prichard Oil Corporation; John Schoeppel for Stephens Petroleum Company; Paul Pinson, Attorney, for Oklahoma Natural Gas Company; Jim Hatcher, Attorney, for Little Nick Oil Company; Robert L. Imler, Attorney, for Sinclair-Prairie Oil Company; John R. Lewis, for Stanolind Oil and Gas Company; John Janovy, for Tidewater Associated Oil Company; Floyd Green, Conservation Attorney and John Blanton, Assistant Conservation Attorney, for the Commission.

After hearing the testimony and being well and sufficiently advised in the premises, the matter was taken under advisement.

Now, on this the 30 day of October, 1947, the matter comes on for further discussion before the Corporation Commission in conference and the Commission being well and sufficiently advised in the premises, is of the opinion that the application should be granted to the following extent and therefore finds as follows:

Findings

1. That this is an application of Walker T. Pound, Director of Conservation, for an order amending Order No. 17473, issued in Cause CD No. 903, so as to provide for a new and different formula for the allocation of natural gas production from the lower Charlson sand of the Chickasha gas field, and a new formula for the allocation of natural gas production from the Pooler Sand in the Chickasha Gas Field and a new formula for the allocation of gas production from the Glover Sand in the Chickasha Gas Field, Grady County, Oklahoma.

2. That this commission has jurisdiction over the subject matter herein, that notice has been given in all respects as required by law, and that certain protests have been made to the granting of this application, although all parties participating in the proceeding agreed that a new formula should be fixed for the allocation of gas production from the three common sources of supply.

3. That the Commission has heretofore regulated the production of natural gas from the lower Charlson Sand of the Chickasha Gas field by Order No. 17473, but that the knowledge gained by the production of gas from said common source of supply has indicated that the formula prescribed has not adequately protected the correlative rights of all interested parties in the field, for the reason that some wells under the formula are being allowed to produce more than their proportionate share of the gas from the pool, while other wells are not being given an allowable sufficient to permit them to produce their proportionate share of gas in the field; that the Glover Sand common source of supply has been discovered in the same field and as yet no formula has been fixed for the allocation of gas production from said sand, and it is necessary to regulate the production from that sand so as to protect the correlative rights of all interested parties and prevent waste; that the two other sands, being the Pooler and Mona, have also been discovered but the Commission is of the opinion that those two other sands, should be regulated as one common source of supply since they are now at least interconnected by drilling and that this zone should be designated as the Pooler Sand Common

source of supply; that a formula should be fixed at this time allocating the production from the Pooler Sand common source of supply.

4. That in order to carry out the laws of the State of Oklahoma providing for ratable taking, prevent waste, and protect the interests of all parties in the Chickasha Gas Field, it is necessary that an order, hereinafter issued, be placed into effect as of November 1st, 1947, regulating the production of natural gas from the lower Charlson Sand of the Chickasha Gas Field, the Glover Sand of the Chickasha Gas Field and Pooler Sand of the Chickasha Gas Field.

5. That Order No. 17473, issued in Cause CD No. 903 should be superseded by the order herein provided for, except that all underages and overages which have accumulated under said order shall be carried forward in this new order.

Order

It is therefore ordered by the Corporation Commission of Oklahoma as follows:

1. That Order No. 17473, issued in cause CD No. 903 shall be superseded by this order and that this order shall become effective as of November 1st, 1947, at 7 o'clock, a.m.

2. That a map be attached hereto, marked Exhibit "A" and made a part hereof, which shows the boundaries of the lower Charlson Sand common source of supply in the Chickasha Gas Field and the acreage attributable to each well producing from the lower Charlson Sand of the Chickasha Gas Field.

3. That a map be attached hereto, marked Exhibit "B" and made a part hereof, showing the boundaries of the Glover Sand common source of supply in the Chickasha Gas Field and the acreage attributable to all wells drilled in the said common source of supply.

4. That a map be attached hereto, marked Exhibit "C" and made a part hereof, showing the boundaries of the Pooler Sand common source of supply in the Chickasha Gas Field, and the acreage attributable to all wells completed in said common source of supply.

5. That all gas produced from either of the three common sources of supply mentioned herein, must be segregated

from any and all other common sources of supply, so that there shall be no co-intermingling of gas or gases from one common source of supply with another common source of supply in any well bore in the Chickasha Gas Field.

6. That each well producing from any one or all of the three common sources of supply shall have allocated to it each month as its ratable portion of the total taking of gas from either common source of supply, that proportion of the entire monthly production of said common source of supply as shall be reflected under the monthly calculation of the allocation formula; which allocation formula shall be "productive acreage" times "adjusted potential factor" times "pressure factor" for each new well.

7. Productive Acreage, as used in this order, shall be such portion of the total acreage in the unit as is within the productive area of either of the three common sources of supply; and in applying the allocation formula, only the productive acreage of each unit shall be considered.

8. Acreage Factor for each well and for each common source of supply, shall be the number of productive acres assigned to it, all as shown by Exhibits "A", "B", and "C", attached hereto.

9. Adjusted Potential Factor for the lower Charlson Sand shall be the absolute open flow calculated for the well under the provisions of the order providing for potentials calculated to the 0.55 power; the "adjusted potential factor" for the Pooler Sand shall be absolute open flow calculated for the well under the provisions of the order providing for potentials calculated to the 0.57 power.

10. Method of Taking Potentials in Charlson Sand—The "natural flow potential" shall be that volume of gas capable of being produced in a twenty-four hour period measured at standard conditions of sixty degrees (60°) Fahrenheit temperature, and at four (4) ounce pressure above atmospheric pressure assumed to be the 14.4 pounds per square inch pressure, or at 14.65 pounds per square inch pressure absolute and with atmospheric pressure at the sand face as provided by the Bureau of Mines Monograph Seven back pressure method.

Such natural flow potential tests shall be taken by the Bureau of Mines back pressure method, using four (4) back

pressure flows taken in sequence from low flow to high flow, from which four flows an absolute open flow for the well will be established in accordance with the general provisions of Monograph 7; provided that, when the data obtained from such four flows has been plotted on log-log paper, a straight line flow curve will be drawn as nearly as possible through such four points, or three points, as most reasonably appears to be the flow curve of the well. In the event that the four points so plotted clearly show a tendency to make a curved line instead of a straight line, the two highest points so plotted shall be used to project a straight line, which will determine the absolute open flow. In the event a test so taken results in a flow curve of which the value of the exponent is greater than .90 and in which the drop in bottom hole pressure on the highest flow is less than twenty-five percent (25%) of the bottom hole shut-in pressure, such test shall be rejected and the well shall be re-tested, and such re-test will be taken under such conditions that the bottom hole pressure on the high flow shall be twenty-five percent (25%) or more, less than the shut-in bottom hole pressure.

Natural flow potential tests shall be authorized representative of the Oil and Gas Conservation Department, and the official results of said tests shall be determined by said Department; and immediately upon completion of the tests of all wells in the lower Charlson Sand Zone, such tests shall be filed of record in the offices of the Conservation Department. Subsequent natural flow potential tests shall be taken by or under the supervision of and in the presence of an authorized representative of said Department at such times as may be provided by law, or directed by order of the Corporation Commission, or as may be agreed upon by all of the operators of wells in the Lower Charlson Sand zone, with the approval of the Director of Conservation, or his representative; provided that a new potential may be taken on any well or wells at the request of the owner or operator, in which event the open flow test so taken shall be given to all other operators and purchasers in sufficient time to give them opportunity to be present. All such subsequent natural flow potentials shall be effective as of the first day of the month succeeding the date the potential is taken.

11. Method of Taking Potentials in Pooler and Glover Sands. "Natural flow potential" of a well producing gas shall be that volume of gas capable of being produced in twenty-four-hour period measured by standard conditions of sixty degrees (60°) Fahrenheit temperature, and at four (4) ounce pressure above atmospheric pressure assumed to be 14.4 pounds per square inch pressure, or at 14.65 pounds per square inch pressure absolute, and with atmospheric pressure at the sand face in the following manner: The absolute open flow of each connected well in the field shall be determined as follows: The well shall be produced into the pipeline for not less than six (6) hours, during which time the working pressure at the wellhead shall be maintained at seventy-five percent (75%) of the shut-in well head pressure of the well, expressed in pounds per square inch gauge, or as closely thereto as operating conditions in the field will permit. In no case shall the working well head pressure during the test be more than ninety percent (90%) of the shut-in well head pressure of the well being tested, unless it can be shown to the satisfaction of the Director of Conservation that it is impractical to maintain the pressure within the above described limits and that the accuracy of the test will not be unduly affected by failure to do so. Flow shall be measured by approved meter throughout the six-hour test period, and the well head pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of six hours shall be considered the stabilized producing rate corresponding to the working well head pressure existing at that time, provided such rate is not greater than the average producing rate for the entire six-hour period. The observed stabilized producing rate shall be converted to absolute open flow by use of the following formula:

$$AOF = Q \frac{(Pf^2)^{.85}}{(Pf^2 - Ps^2)}$$

AOF—Absolute Open Flow
Q—Observed Producing rate
Pf—Shut-in Pressure of the Well, pounds absolute at at the face of the sand
Ps—Working well head pressure at rate Q pounds absolute at the face of the sand

Shut-in well-head pressure shall be measured by dead-weight gauge after the well has been shut-in for twenty-four hours.

Natural flow potential tests shall be made by or under supervision of and in the presence of an authorized representative of the Oil and Gas Conservation Department, and the official results of said tests shall be determined by said department; and immediately upon completion of the tests of all wells in the Glover and Pooler sands, such tests shall be filed of record in the Offices of the Conservation Department.

12. Effective as of November 1st, 1947, and to apply to any overproduction and underproduction as of said date, all overproduction and underproduction of gas occurring on any well in any month as determined by the calculation with the allocation formula described by the order, shall be adjusted in the allowable for the well for the ensuing month. In determining when a well shall be shut-in for overproduction or when underage shall be cancelled, a model schedule shall be prepared using the highest anticipated nomination for the coming season to calculate a month's allowable by the allocation formula herein set out assuming that the pressure factor on each well is one (1.0). When a well is overproduced, more than the allowable calculated on this basis, the well shall be shut-in and shall not be produced until the overage has been absorbed by allowable. When a well is underproduced in amount equal to the allowable set-up on this basis, its underage shall be cancelled. When the underproduction reaches the amount that it shall be cancelled, then no more underage shall be allowed to accumulate to the credit of the well, its actual months production thereafter shall be the well's current allowable. In the event the actual monthly production at any time thereafter exceeds the amount of gas that would be allowed by the for-

mula, then only the amount of gas allocated by the formula shall be the well's allowable and all produced in excess of this amount shall be considered as overage unless the underage previously cancelled has been reinstated by order of the Commission.

13. Pressure Factor for Pooler and Glover Sands. "Pressure Factor" shall be the value obtained by taking the maximum shut-in casinghead pressure of each well minus seventy-five hundredths (0.75) times the areal weighted average shut-in casinghead pressure of the pool divided by the areal weighted average shut-in casinghead pressure of the pool minus seventy-five hundredths (0.75) times the areal weighted shut-in casinghead pressure of the pool, or as expressed by the fraction:

$$\frac{P-0.75F}{F-0.75F}$$

"P" of said fraction being the maximum shut-in casinghead pressure in pounds per square inch gauge obtained within a twenty-four (24) hour shut-in period, and "F" of said fraction being the areal weighted shut-in casinghead pressure in pounds per square inch of all Glover and Pooler wells in the pool. The areal weighted average shut-in casinghead pressure shall be determined by the summation of the quantities obtained by multiplying the maximum shut-in casinghead pressure of each Glover and Pooler gas well by the number of productive acres in each well's acreage unit, as divided by the summation of the number of productive acres in each well's acreage unit.

14. Pressure Factor for Lowel Charlson Sand Wells. "Pressure Factor" shall be the value obtained by taking the maximum shut-in casinghead pressure of each well minus eighty-five hundredths (0.85) times the areal weighted average shut-in casinghead pressure of the pool divided by the areal weighted average shut-in casinghead pressure of the pool minus eighty-five hundredths (0.85) times the areal weighted average shut-in casinghead pressure of the pool, or as expressed by the fraction:

$$\frac{P-0.85F}{F-0.85F}$$

"P" of said fraction being the maximum

shut-in casinghead pressure in pounds per square inch gauge obtained within a twenty-four (24) hour shut-in period, and "F" of said fraction being the areal weighted shutin casinghead pressure in pounds per square inch guage of all Lower Charlson Sand wells in the pool. The areal weighted average shut-in casinghead pressure shall be determined by the summation of the quantities obtained by multiplying the maximum shut-in casinghead pressure of each Lower Charlson Sand gas well by the number of productive acres in each well's acreage unit, as divided by the summation of the number of productive acres in each well's acreage unit.

15. Shut-in casinghead pressures for use in "pressure factor" may be measured by a deadweight test gauge at the casinghead, or may be calculated by obtaining the pressure at the sand base or bottom casing perforation in the Lower Charlson Sand Zone with a bottom hole pressure bomb and by deducting therefrom the weight of a column of dry gas extending from the casinghead to the point of such bottom pressure measurement, whichever method may be deemed better to obtain the correct pressure.

The shut-in casinghead pressures to be used in the "pressure factor" for gas allocation purposes shall be determined each calendar month between the 20th and 30th days thereof. Same shall be filed in the office of the Conservation Department on or before the first day of the succeeding month. The monthly shut-in casinghead gas pressure shall be taken by or under the supervision of and in the presence of an authorized representative of the Oil and Gas Conservation Department, and such pressures so obtained shall be substituted in the "pressure factor" of the gas allocation formula of each well to allocate the gas production for the succeeding month.

16. In order to carry out the provisions of this order, it is necessary that all operators, lessees, contractors, drillers, gun perforators, and others who perform any service or keep any reports, furnish to the Oil and Gas Conservation Department, or to any of its representatives, a complete report of their records in regard to the physical status and log of the well, and especially depths and thicknesses of the

sand, perforation points, casing records, cementing records, and like information; and upon request of the Director of Conservation such reports shall be filed in the Office of the Oil and Gas Conservation Department.

17. Each well shall have its ratable share of the allocation set up by the Commission, based on the allocation formula hereinabove prescribed. The daily production from gas wells in said common source of supply as determined by the Commission, shall be multiplied by the number of days in the ensuing month to determine the monthly allocation for each well.

18. Each taker and purchaser of gas from wells in said common source of supply shall file with the Director of Conservation reports of the gas taken from each well during any month on or before the 4th day of the succeeding month.

19. Any well hereinafter completed in any of the three zones, shall, upon completion in said separate source or sources of supply, be subject to all of the provisions of this order, except as hereinafter provided. The gas allowable of any well shall become effective on the day that the connections with the pipeline are made and it begins producing gas; and after the natural flow potential test and casinghead pressure for gas allocation purposes has been determined, if it appears at the first hearing before the Commission thereafter that said well during such period has produced more or less than its just proportion, then the same shall be adjusted in the same manner as is provided above for adjustment in case of underproduction or overproduction.

20. Gas allocation volumes shall be based upon a correction of sixty degrees (60°) Fahrenheit temperature and four ounces per square inch gauge above as assumed atmospheric pressure of fourteen and four-tenths (14.4) pounds per square inch or of fourteen and sixty-five one hundredths (14.65) pounds per square inch absolute pressure.

21. The Commission will hold regular hearings, after due and proper notice to all producers and purchasers, at which each purchaser of gas in the Chickasha Field shall notify the Conservation Department of the volume of gas he anticipates taking from each of the three common sources of

supply in said field during the ensuing month, and the Commission shall thereupon determine the ratable proportion of the gas to be produced from each of the three common sources of supply to be allocated to each well making adjustments as to overage and underage as hereinabove set out; provided that, if during the month the amount of gas which a purchaser desires to take from said Chickasha Field increases or decreases from the amount originally stated to the Commission, said purchaser shall immediately notify the Conservation Department, and that the Department is hereby directed to prepare and issue a new allocation for all wells in the pool, so that each well will receive its ratabe and proportionate part during that month.

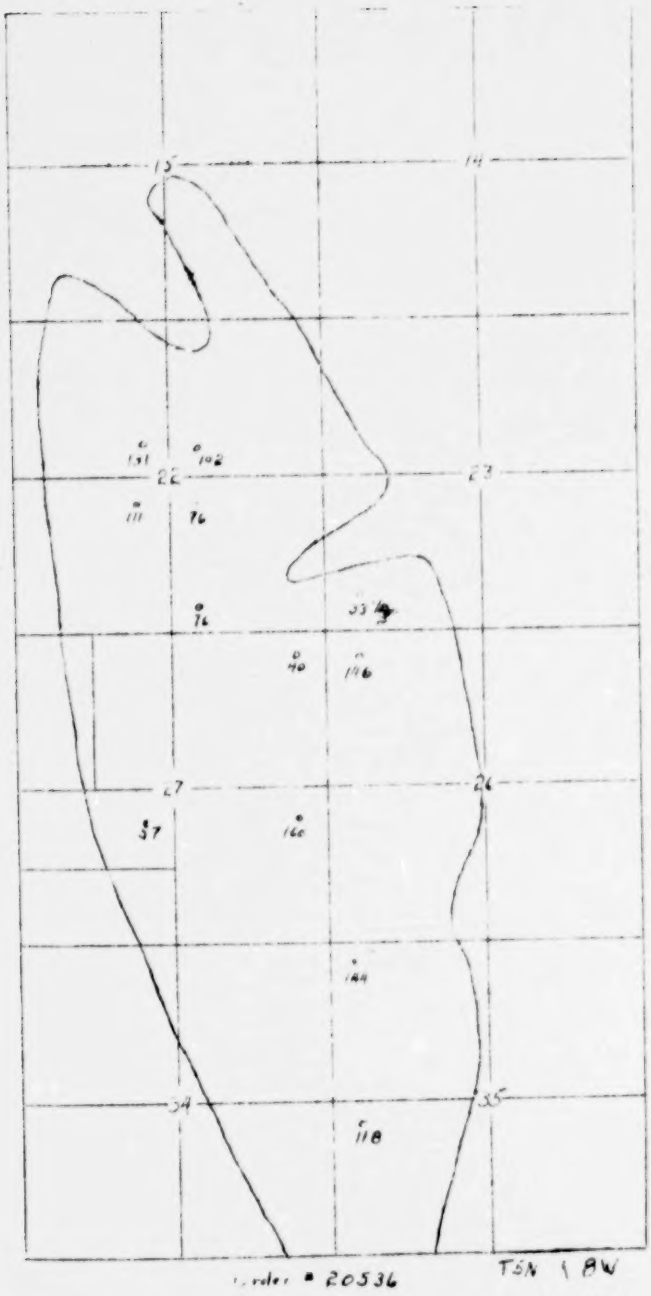
22. That all purchasers taking gas produced from the Pooler and Glover Sand, file with the Conservation Department, their nomination as to the amount of gas that they desire to purchase from each common source of supply during the month of November, 1947; that the Conservation Department then allocate to the two common sources of supply, the amount of gas so nominated and to distribute such amount to the various wells completed into the two common sources of supply as provided for under the formula established herein.

Done and performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma this 30th day of October, 1947.

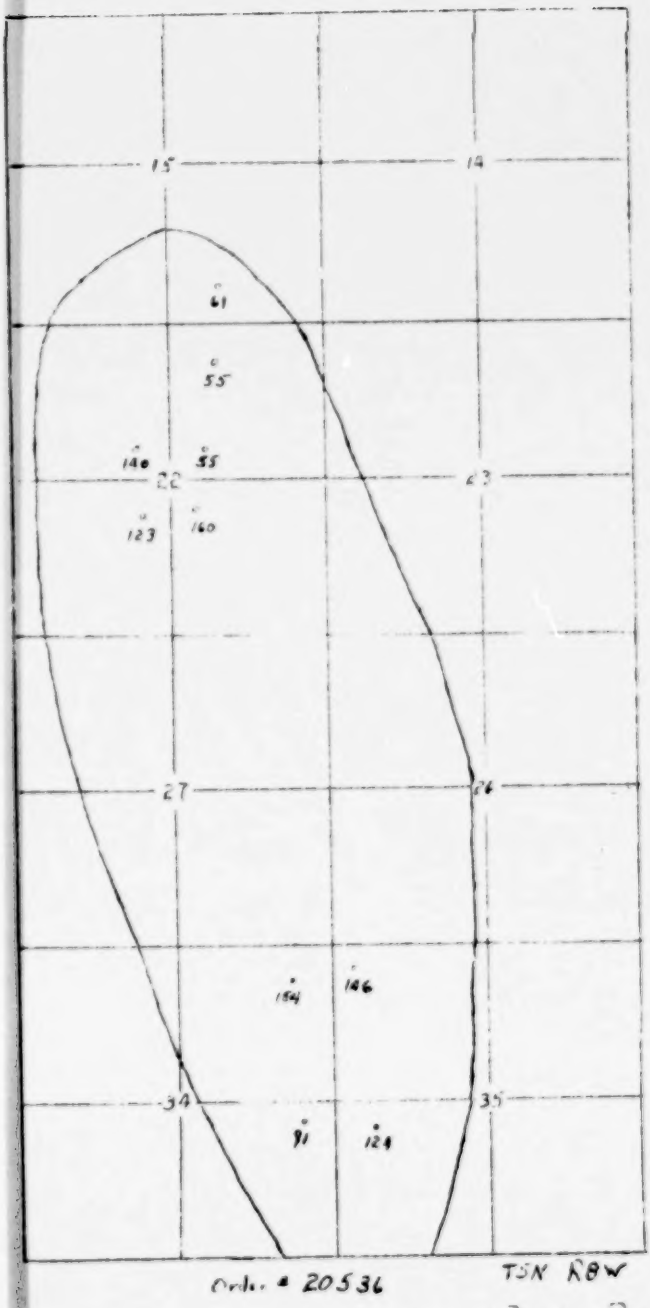
CORPORATION COMMISSION
OF OKLAHOMA,
REFORD BOND,
Chairman,
RAY O. WEEMS,
Vice-Chairman,
RAY C. JONES,
Commissioner.

Attest:
TOM MCMURRAY,
Secretary.

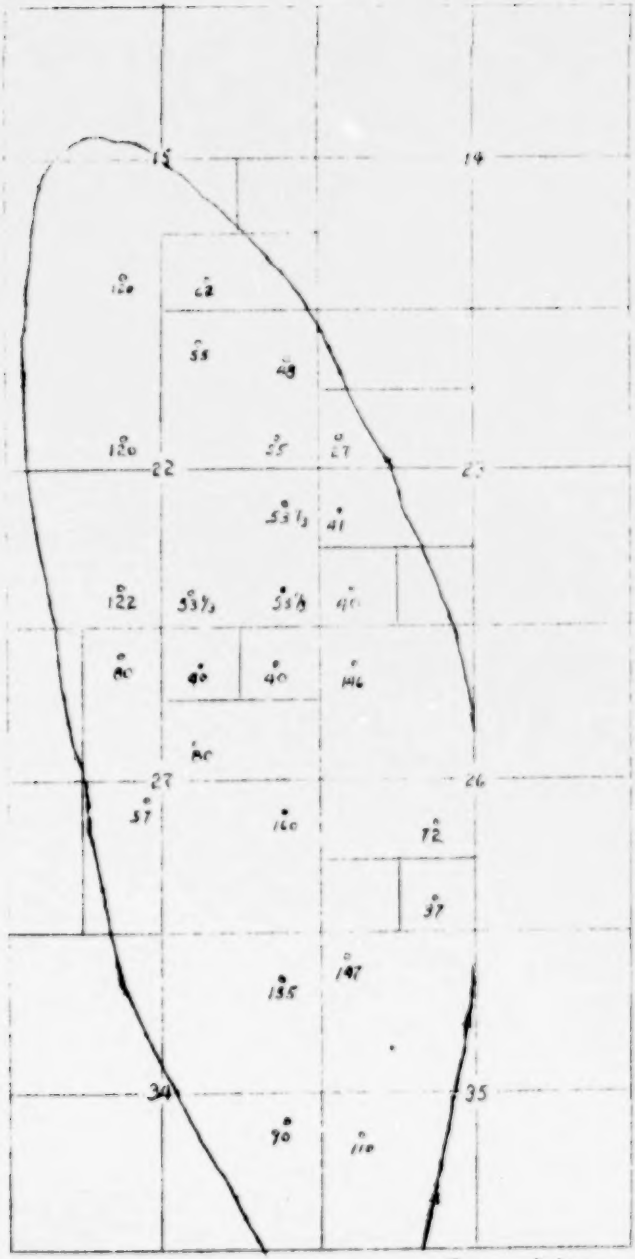
(Here follows 3 Exhibits)



Chickasha Gas Pool - Upper Zone Lines



Cohasset Gas Fld. - Portal Zone Lines.



Order # 20536 T 5 N R 8 W

Chickasha Gas Pool

APPENDIX "C"

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 34,283

ANDERSON-PRICHARD OIL CORPORATION, *Plaintiff in Error,*

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error*

SYLLABUS

1. Upon the discovery of oil or gas in commercial quantities, a lessee thereby acquires a vested, though limited, estate in the land covered by the lease, but such right is subservient to the power of the State to regulate the taking of gas from all common sources of supply within the state, to prevent waste, and to protect the interests of the public and of all those having a right to produce from a common source of supply.

2. Upon an appeal from an order of the Corporation Commission asserting a violation of rights of the parties under the State or Federal Constitution, this court will exercise its own independent judgment as to both the law and the facts, as provided by Sec. 20, Art. IX of the Oklahoma Constitution, and will examine the entire record to determine whether the order is lawful and supported by competent and substantial evidence the order will be affirmed.

APPEAL FROM AN ORDER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Appeal by Anderson-Prichard Oil Corporation from an order of the Corporation Commission of Oklahoma fixing the western boundary line of the productive area of the Pooler zone in the Chickasha gas field so as to give Anderson-Prichard only 57 acres as an acreage factor in the allocation formula of gas in lieu of the 160 acres covered by Anderson-Prichard lease.

ORDER AFFIRMED

W. H. Brown, Paul G. Darrough, Virgil R. Ball, of Brown, Darrough & Ball, Oklahoma City, for Plaintiff in Error.

Floyd Green, John Blanton, Oklahoma City, for Defendant in Error, Corporation Commission.

Ralph W. Garrett, Robert L. Imler, George D. Almen, Jr., all of Tulsa, for Defendant in Error, Sinclair Oil & Gas Co.

Jim Hatcher, Reford Bond, Jr., Chickasha, for Defendant in Error, Little Nick Oil Company.

Albert G. Kulp, Paul Pinson, O. L. Lupardus, C. A. Kothe, T. H. Eskridge, All of Tulsa, for Defendant in Error, Oklahoma Natural Gas Co.

Y. P. Bromme, Tulsa, for Defendant in Error, Tidewater Associated Oil Company.

HALLEY, *V. C. J.*:

The Chickasha Gas Field is located in Grady County, Oklahoma. It has three distinct sands, or zones, from which it produces gas in commercial quantities. The deepest sand is called the Pooler zone, sometimes referred to as the Mona Sand, and above it are the Glover and Charlson zones. Production from each of these three zones may be had from a single well. Anderson-Prichard Oil Corporation is the owner of a lease covering the SW¼ of Sec. 25-5-8W, and on the date of the order here complained of it had completed its well, known as the Thomas #1, on the northeast ten acres of its 160 acres, into the Glover and Charlson zones, and had drilled this well into the Pooler zone, but had not completed it. The tests made indicated it would be a producer from the Pooler zone.

On October 30, 1947, the Corporation Commission of Oklahoma entered its order #20,536, providing a formula for the allocation of gas production from the three producing zones above named. The express purpose of this order was to provide for ratable taking, to prevent waste, and to protect the interests of all parties concerned. This order provided for an acreage factor in the allocation formula, and that such acreage factor should be the number of "productive acres" assigned to each well in either or all three

producing zones, or common sources of supply, in this field, and that no well should have an acreage factor in excess of 160 acres. Anderson-Prichard's Thomas #1 was not completed as a producer in the Pooler zone until September, 1948, when it was found to have a daily potential production of 23.4 MCF of gas.

Order #20,536 fixed the acreage factor of Anderson-Prichard's Thomas #1 well at 57 acres, for the reason that the Commission found that the western boundary of the Pooler zone included only 57 acres of the 160-acre lease of Anderson-Prichard, and under the allocation formula mentioned above only productive acres could be considered as an acreage factor. No wells had been drilled west of the Thomas #1 in that area to prove definitely the western boundary of the Pooler zone, and the Commission admitted that the western boundary line of the Pooler zone, as found and fixed by it, was a "compromise line", indicating a lack of certainty as to the exact location of the western limits of the zone in that area.

After its completion of Thomas #1 as a producer in the Pooler zone, Anderson-Prichard filed an application with the Corporation Commission, seeking to amend Order #20,536 in such manner as to give Anderson-Prichard as an acreage factor its entire lease of 160 acres, and thereafter amended its application seeking a change in the western boundary line of the Pooler zone so that it would extend far enough in a westerly direction to include all of the Anderson-Prichard lease of 160 acres. Such an order would have affected other producers by increasing their acreage factor in cases where it had been decreased, by fixing the western boundary of the zone to correspond with that of the other producing zones above it.

On June 17, 1949, the Commission issued Order #22,506, denying Anderson-Prichard's application, and leaving its acreage factor at 57, as fixed by Order #20,536. This appeal is from Order #22,506.

The authority of the Commission to allocate the taking of gas from a common source of supply is found in Sec. 239, 52 O. S. 1941, and is as follows:

> "Whenever the full production from any common source of supply of natural gas in this state is in excess

> of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply, having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided that the Corporation Commission may by proper order permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discriminaiton in favor of any one such common source of supply as against another."

It will be noted that the Commission must determine the market demand for gas monthly from the field under consideration. The Commission then apportions this production equitably and ratably between the various owners and producers in the field. One of the factors to be used in making such allocation is the "acreage factor." Hence, it is necessary for the Commission to determine how many productive acres each producer has in the producing strata, in order to determine the amount of gas such producer is entitled to produce from each common source of supply.

In Republic Natural Gas Company v. State, 198 Okla. 350, 180 P. 2d 1009, this court said:

> "By 52 O. S. 1941, Sec. 239 the Corporation Comn.ission is given the right to regulate the taking of natural gas from any common source of supply so as to protect the interests of all those having the right to produce therefrom."

Anderson-Prichard claims that the completion of its Thomas #1 well as a producer in the Pooler zone one established for allocation purposes its entire 160-acre Thomas lease. The order of the Commission did fix 160 acres as the maximum acreage factor to be used in allocating the amount of gas which each well was entitled to produce. No order had been made fixing the location of any well in this field. A lessee had the right to drill on any location he might select, and all operators had apparently exercised this right, since none of them had drilled in the center of a lease. If Anderson-Prichard had drilled other wells on its 160-acre lease, its allowable production would not have been increased, because 160 acres had been fixed as the maximum acreage factor to be used in the allocation formula. Anderson-Prichard claims that since it owned a lease of 160 acres and drilled one producing well thereon, such well proved the productivity of the entire lease and gave the lessee an absolute right to use 160 acres as an acreage factor in the allocation formula to determine the amount of gas it was entitled to take from the field through this well.

We conclude that the foregoing statutory provisions vest in the Corporation Commission the authority to make its original order #20,536, and that the holding in the Republic Natural Gas Co. case, above quoted from, is ample authority to support the claim that such power is statutory. We know of no authority which denies the right of the Corporation Commission to use an acreage factor in allocating the amount which a producer may produce from a particular well. It is not the only factor entering into the allocation formula. Pressure and potential productive capacity are also used in arriving at an allocation figure.

We have examined the authorities cited by Anderson-Prichard in support of its first proposition. They hold that where a lessee goes upon land, explores and discovers oil or gas in paying quantities, and reduces the same to possession, the lessee thereby becomes vested with "an estate therein as corporeal property * * *", and "are entitled to be protected in the exercise of their rights according to the terms and conditions of their contract", as we said in Brennan v. Hunter, 68 Okla. 112, 172 P. 49

1918. The vested estate of the lessee is limited. Sec. 238, Title 52, O. S. 1941, enacted in 1915, as was Sec. 239, above quoted, vests in the Corporation Commission authority "to require the conservation of gas" at that early date. It provides that when gas is encountered in commercial quantities, it shall be confined in its original stratum until it can be produced and utilized without waste. The estate vested in the lessee by production does not vest such rights as transcend the power of the Commission to take such reasonable steps as it finds necessary to prevent waste and protect the correlative rights of all those who take from the common source of supply. It is true that the Commission had fixed a maximum acreage factor of 160 acres in this field, but we think this acreage factor necessarily means productive acreage. Suppose a lessee has a lease on 640 acres and drills a productive well, and it is later proved that only half of the acreage covered by the lease is productive; it would be unjust to other producers in the lease area to permit the non-productive acreage to be included in the acreage factor used in the allocation formula, where the maximum acreage would be fixed at 640 acres.

Since the term "acreage factor", as used in the order of the Commission, is expressly fixed at and limited to "productive acreage", the decisive issue is whether or not the finding of the Commission that only 57 acres of the Anderson-Prichard lease was productive was supported by substantial evidence. This question depends upon whether or not the Commission had before it substantial evidence to support its finding that the western boundary of the Pooler zone was as fixed by the Commission. The eastern portion of the Anderson-Prichard lease was admittedly productive and had been proved productive by the drilling of its well in the northeast corner of its lease, where it had a right to drill. The western boundary of the Pooler zone, under the Anderson-Prichard lease, was so fixed that only 57 acres of their 160-acre lease was within the productive area of the Pooler zone. Sec. 20 of Art. IX of the Constitution of Oklahoma, as amended by S. B. 61 of the 1941 legislature, is as follows:

"The Supreme Court's review of appealable orders

> of the Corporation Commission shall be judicial only, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the court shall exercise its own independent judgment as to both the law and the facts. In all other appeals from orders of the Corporation Commission the review by the Supreme Court shall not extend further than to determine whether the Commission has regularly pursued its authority, and whether the findings and conclusions of the Commission are sustained by the law and substantial evidence. Upon review, the Supreme Court shall enter judgment, either affirming or reversing the order of the Commission appealed from."

It will be noted that the above section of our Constitution makes two provisions relative to the duty and power of this court in considering appeals from orders of the Corporation Commission. In those appeals involving an "asserted violation of any right of the parties" under either the State or the Federal Constitution, "the court shall exercise its own independent judgment as to both the law and the facts."

The Corporation Commission has cited the case of Pannell et al v. Farmers Union Cooperative Gin Ass'n et al., 192 Okla. 652, 138 P. 2d 817, in support of the rule that on appeals from orders of the Corporation Commission this court is required to review the evidence "and must sustain the order appealed from if it is supported by substantial evidence." The case of Peppers Refining Co. v. Corporation Commission, 198 Okla. 451, 179 P. 2d 899, and a number of other cases wherein the "substantial evidence" rule has been followed and approved, are cited. We find no fault with these decisions, but they are not within the first class of appeals mentioned in Sec. 20, Art. IX of the Constitution, above quoted, because they are not appeals from orders where the parties assert the violation of some constitutional right. They all appear to fall within the second class of cases covered by the clause, "In all other appeals from orders of the Corporation Commission, the review

by the Supreme Court shall not extend further than to determine whether the Commission has regularly pursued its authority, and whether the findings and conclusions of the Commission are sustained by the law and substantial evidence."

Anderson-Prichard here contends and asserts that the order of the Commission appealed from is violative of its rights under both the due-process clause of the Oklahoma Constitution and the Fourteenth Amendment to the Constitution of the United States. We think it clear that whether the order appealed from falls within the first or the second category, it must be lawful and supported by competent and substantial evidence. "Substantial evidence" is defined in the Pannell case, supra, as follows:

> "* * * substantial evidence means something more than a 'scintilla of evidence', and means evidence that possesses something of substance and of relevant consequence and such that carries with it fitness to induce conviction."

—quoting with approval from N. L. R. B. v. A. S. Abell Co., 4 Cir., 97 F. 2d 951, wherein it was said:

> "Substantial evidence is evidence furnishing a substantial basis of fact from which the fact in issue can reasonably be inferred * * *",

and from N. L. R. B. v. Union Pacific Stages, 9 Cir., 99 F. 2d 153, as follows:

> "* * * It implies clarity of proof which induces conviction and makes an impression on reason."

All of the evidence bearing upon the western productive limits or boundary of the Pooler zone in the Chickasha gas field consists of testimony of petroleum engineers and geologists. It was the testimony of expert witnesses, based upon training, experience, and study of similar fields and of this particular field. It was of a scientific nature. All agree that the only absolutely certain method of fixing the productive limits of a producing sand or zone located from 8,000 to 10,000 feet below the surface is the drilling of wells. Here

no such wells had been drilled west of the Anderson-Prichard Thomas #1.

Sec. 86.1, 52 O. S. 1941, provides that the term "common source of supply" shall "include that area which is underlaid or which, from geological or other scientific data, or from drilling operations or other evidence, appears to be underlaid, by common accumulation of oil or gas, or both * * *". This clearly indicates that geological or other scientific data may be relied upon to determine the productive limits of a common source of supply. We assume that it will not be disputed that the Commission has the power to define and fix the limits or boundaries of any common source of supply. The entire proration system, often upheld by this court, depends upon the power of the Commission to determine what area constitutes a common source of supply.

We are unable to agree with the contention of Anderson-Prichard that the completion of one producing well in the northeast corner of their 160-acre lease proved the entire 160-acre lease productive, although the Commission had fixed 160 acres as the maximum acreage factor in the allocation formula. The testimony of trained and experienced geologists and petroleum engineers is expert testimony, entitled to due consideration, especially where no well or wells have been drilled to disclose exactly the productive limits of a sand or zone located far beneath the surface.

Mr. A. H. Richards, District Geologist for Anderson-Prichard, testified that there was no certain way of determining the productive boundaries or limits of a pool, except by drilling. Portions of his testimony follow:

"Q. And until it is drilled out and tested there is no way of determining the line of any zone—that's right, isn't it?

"A. That is correct.

* * * * *

"Q. Mr. Richards, I believe you testified that you have no knowledge, or that you have no idea how far west the productive limits of this field extend in the Pooler zone? Is that right?

"A. That's right.

"Q. If you had the job on the determination of the westerly productive boundary of the Pooler sand—if it was your job to determine the westerly productive boundaries of the Pooler sand, what factors would you take into consideration?

"A. I would turn that job over to the Engineering Department.

"Q. That's an engineer's job rather than your job?

"A. That's right.

• • • • •

"Q. I believe you said, Mr. Richards, that in the absence of a non-producing, a non-producer being drilled in the Pooler zone, to the west of the Thomas well, that there is absolutely no basis on which to fix the western boundary of the Pooler zone—is that correct?

"A. That's correct. From the information that we now have there is absolutely no place to fix the west boundary of the Pooler zone.

"Q. Geologically speaking, that's the only basis to fix the productive boundaries of the Pooler zone?

"A. That's correct.

• • • • •

"Q. To carry this over a point farther—in the absence of the sand being actually condemned by the drilling of a dry hole, is it your opinion that there is absolutely no basis for fixing any productive boundary at all, any, in any of these sands, with respect to this field?

"A. Not until it is proven non-productive.

"Q. Then, in the absence of a non-productive well, it should extend indefinitely on all sides?

"A. Until it is proven non-productive.

• • • • •

"Q. Mr. Richards, you are testifying as a geologist, are you not?

"A. Yes, sir.

"Q. And you say that the—you are saying now that the limits should be fixed with respect to the size of the

lessee's lease, rather than on any geological basis—is that what you mean?

"A. Until proven such. If there was a dry hole there that would fix the boundary."

He testified as to the west half of the Anderson-Prichard 160 acre lease as follows:

"Q. Do you think the Pooler zone is productive in the west half?

"A. I sure do—that's my opinion—I have no proof of it.

"Q. But holding that opinion you would recommend the drilling of that well?

"A. If I thought the upper zone would help pay the bill—if I thought the upper zone would help pay part of the bill.

"Q. Then, on the basis of what you have just said, then you don't consider the Pooler zone to be productive in the west half . . .

"A. I didn't say that at all. I don't know.

"Q. Commercially?

"A. Well, I don't know. I don't want—I don't know whether it would be or not, but if it were not for the shallow zones in there . . .

"Q. Well, you mean you wouldn't recommend it without the shallow zones to help pay it out?

"A. I would want them to help pay it out. That's a mighty expensive hole.

"Q. Yes, and you would want help from those other two zones?

"A. That's right. But I still say I think the west half would be productive."

Mr. Richards testified positively that he thought the limits of the productive area of the Pooler zone should include all of the Anderson-Prichard lease.

Mr. A. R. Greer, Petroleum Engineer for Anderson-Prichard, testified that the Pooler sand increases in thickness toward the west, and said:

"Q. And the thickness of the sand isn't material as to whether or not the sand is productive at all, is it; in

other words, you could have a sand three hundred feet thick that would be non-productive?

"A. Yes, it is possible.

"Q. Or twice as thick as the Thomas Number One?

"A. It is possible to have thick sand that is not productive—yes, sir.

• • • • • • •

"Q. Then the boundaries you propose would not be based on geological or engineering data but rather on lease boundaries, is that correct?

"A. Inasmuch as there is no geological or engineering data to support the presumption that the field runs out before it reaches the lease line, that is what we would do.

• • • • • • •

"Q. Then you agree that there is a geological basis for fixing boundaries, and it doesn't necessarily take a dry hole to fix productive boundaries in a field?

"A. That is true."

Mr. R. M. Gawthrop (appearing in the record as "R. N. Gothrip"), Chief Geologist for Sinclair, testified that he was present at the original hearing before the Corporation Commission in Case CD-1463, and with other geologists and technical experts had submitted a map to the Corporation Commission showing the productive limits of the Pooler Zone to the west side of the field. In his opinion, 57 to 60 acres of the Anderson-Prichard lease was productive in the Pooler zone. He testified as follows as to what factors he took into consideration in arriving at his conclusion as to where the western boundary line should be fixed:

"Well, then, I made one of those maps, that was presented to the Corporation Commission Engineer, and on that map I took into consideration the structure, the development, and drew what I though was a fair representation of the probable productive acreage, and on that map I would give the Anderson-Prichard—and I also made up a schedule, the number of acres that

would come within the line for each individual lease (indicating on map) and on the Anderson-Prichard lease I gave them 60 acres. I later measured it with a (planimeter) and I measured, and it measured 57 acres, not 157. • • •

"Q. He showed me thought that Exhibit 13 was his opinion of the limits of the lease and then he did that, and he drew a map, and I am now asking if he believed they coincided.

A. I don't have any reason to change my opinion.

• • • • • • •

"Q. Do you think that the present western limits of the Pooler sand is designated by Order 20536, or in your opinion?

"A. Yes, that's right.

"Q. Is there any physical factor to justify extending the boundary line to the west?

"A. None that I know.

• • • • • • •

"Q. Is it necessary, in your opinion, to have a dry hole to determine the western boundary of this pool?

"A. If you had a dry hole a half a mile away, you still wouldn't know whether the productive sand stopped 200 feet away from the well or 200 feet away from the dry hole—so not knowing, you would probably split the difference—a dry hole wouldn't necessarily show the limits of the pool.

"Q. Is there in your opinion anything that has been brought out in the questions or testimony here today, which would in your opinion justify extending the western boundary?

"A. No—none."

Mr. A. B. Eley, District Geologist for Oklahoma Natural Gas Co., testified that he was familiar with the Chickasha gas field and had worked with the Chickasha gas field since 1940.

He testified as follows:

"Q. Have you studied the map which was issued by the Corporation Commission in order No. 20536?

"A. I have.

"Q. Are you familiar with it in all respects?

"A. Yes.

"Q. Are you familiar with the field in question and the geological facts relating thereto?

"A. Yes, sir.

"Q. Now, will you answer the question I put just a moment ago, to which objection was made?

"A. Will you state it again?

"Q. In your opinion as a geologist, based upon your knowledge both of the field and of the map, do you believe that the lines drawn on this map, Exhibit 11, correctly reflect the productive limits of the Pooler sand Zone?

"A. That's my opinion, that it's correct."

Mr. John Janovy, District Geologist for Tidewater Associated Oil Company, testified as follows:

"Q. Are you familiar with the area commonly known as the Chichasha gas field?

"A. Yes, sir.

"Q. And have you made a study of that field with regard to the Pooler sand Zone?

"A. Yes, sir.

"Q. Have you made an independent study to determine the western boundary as you would draw it?

"A. I have.

"Q. What factors have you used to determine the western boundaries?

"A. We have no actual facts to determine the boundary on in geology but we use what facts we can determine from the study of an area. In this case, we have two known productive sands above the Pooler zone which we can establish definite boundaries on. In this case, the boundaries on. In this case, the boundaries are approximately the same, so in the other sands below these two I have used the same boundaries.

"Q. Are there any physical facts to justify, in your opinion, extending the boundary farther to the west?

"A. Development.

"Q. Does Tidewater have any leases in this area?

"A. Yes.

"Q. Would Tidewater benefit by extending this boundary to the west?

"A. I believe they would.

"Q. Is it necessary, in your opinion, to have a dry hole to prove the field will not produce upon certain areas?

"A. No.

"Q. Is there anything, in your opinion, to show that this western part of the Anderson-Prichard Thomas lease will produce?

"A. No."

It is interesting to note that the company employing Mr. Janovy owned some leases in the Chickasha field and, in his opinion, would benefit somewhat if the western boundary line of the Pooler zone were extended to cover all of the lease of Anderson-Prichard. The opinion of expert witnesses is generally accepted by the Court as constituting substantial evidence. Grison Oil Corp. v. Corporation Commission, 186 Okla. 548, 99 P. 2d 134. The witnesses above mentioned had all had experience with this particular field and similar fields, and we conclude that their testimony constituted competent and substantial evidence to support the order of the Commission fixing the western boundary line of the Pooler zone at a line which included only 57 acres of the Anderson-Prichard lease.

Anderson-Prichard contends that the order appealed from denies it due process of law and is in violation of that clause of the Constitution of the State of Oklahoma, and also of the Fourteenth Amendment to the Constitution of the United States. We have above quoted Sec. 239, Title 52, O. S. 1941, under proposition 1, wherein it is made the duty of the Corporation Commission "* * * to regulate the taking of natural gas from any and all common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having the right to produce therefrom * * *." In Patterson v. Stanolind

Oil & Gas Co., 182 Okla. 155, 77 P. 2d 83, 305 U. S. 376, 83 L. Ed. 231, this court said in the first syllabus:

> "The police power of the State includes the protection of the correlative rights of owners in a common source of oil and gas supply, and this power may be exercised by regulating the drilling of wells into said common source of supply and distributing the production thereof among the owners of mineral rights in lands overlying said common source of supply as provided by Chapter 59, Art. 1, S. L. 1935, without violating either sections 7, 15, or 23 of Article 2 of the Oklahoma Constitution, or Section 10, Article 1, and Section 1 of the Fourteenth Amendment to the United States Constitution."

The court in that case also mentioned Brown et al. v. Humble Refining Co. (Texas), 83 S. W. 2d 935, 87 S. W. 2d 1069, 99 A. L. R. 1107, 101 A. L. R. 1393, which quoted with approval from Lombardo vs. City of Dallas (Texas), 73 S. W. 2d 475, as follows:

> "All property is held subject to the valid exercise of the police power, nor are regulations unconstitutional merely because they operate as a restraint upon private rights of persons or property or will result in loss to individuals. The infliction of such loss is not a deprivation of property without due process of law; the exertion of the police power upon subjects lying within its scope, in a proper and lawful manner, is due process of law."

In Russell v. Walker, 160 Okla. 145, 15 P. 2d 114, this court said in the first syllabus:

> "Under the police power of the state, the legislature may regulate and restrict the use and enjoyment of landowners of the natural resources of the state, such as oil and gas, so as to protect them from waste, and prevent the infringement of the rights of others. Such legislation does not infringe the constitutional inhibitions against taking of property without due process

of law, denial of the equal protection of the laws, or taking property without just compensation."

In 2 Constitutional Limitations (8th Ed.) pages 1319-1320, it is said:

> "The legislature may also regulate and restrict the use and enjoyment of landowners of the natural resources of the state such as subterranean waters, gas, oil, and timber, so as to protect them from waste and prevent the infringement of the rights of others. Such legislation does not infringe the constitutional inhibitions against the taking of property without due process of law, denial of equal protection of the laws, or taking property without just compensation."

Sec. 86.4, 52 O. S. 1941, provides that the Corporation Commission may make orders, rules, and regulations applicable to each common source of supply, and may make general orders, rules, and regulations applicable alike to all common sources of supply in the state. We think that the erroneous contention of Anderson-Prichard that the completion of its Thomas #1 well proved the entire 160 acres productive is based upon the fact that 160 acres was fixed as the maximum acreage factor for this field; but this maximum acreage is only to be used where it is found that the entire 160 acres is productive. It would be unjust to allow 160 as an acreage factor in the allocation formula if only a portion of such acreage were shown to be productive. The portion of their acreage held non-productive may yet be included in the acreage factor, should further development to the west prove that it is productive.

Since the above quoted section of our State Constitution provides that on appeals from orders of the Corporation Commission asserting violation of constitutional rights, this court is authorized to exercise its own independent judgment as to the law and the facts, we have concluded that the order appealed from is lawful, is supported by competent and substantial evidence, and does not deprive Anderson-Prichard of any constitutional right; and the order of the Commission is therefore affirmed.

Correction order of the Supreme Court of Oklahoma.

(Filed in Supreme Court of Oklahoma October 4, 1951, Andy Payne, Clerk.)

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 34,283

ANDERSON-PRICHARD OIL CORPORATION, *Plaintiff in Error,*

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error*

Order

It is hereby ordered that the opinion in the captioned cause be amended and corrected as follows:

By changing the property description in Line 8, page 3, from "Sec. *25*-5-8W" to "Sec. *27*-5-8W."

Done by order of the Court this 4 day of October, 1951.

BEN ARNOLD,
Chief Justice.

APPENDIX "D"

RULES OF THE SUPREME COURT OF OKLAHOMA RELATING TO REHEARINGS

28. Rehearings: Application for a rehearing in any cause, unless otherwise ordered by the Court, shall be made by petition to the court, signed by counsel, and filed with the Clerk, within fifteen (15) days from the date on which the opinion in the cause is filed. No oral argument on petition for rehearing shall be allowed except upon order of the Court. No motion or application for rehearing or review will be allowed after the denial of a petition for rehearing without leave of the Court. The Clerk shall not file any such motion or application except by leave of the Court first obtained. No petition for rehearing shall be filed or considered without proof of service.

29. Application for Second Petition for Rehearing: Within five (5) days after a petition for rehearing is denied an application for a second petition for rehearing may be made but not filed except by leave of Court. Such application shall have attached thereto a petition for rehearing and brief in support thereof.

APPENDIX "E"

(Filed in Supreme Court of Oklahoma October 16, 1951, Andy Payne, Clerk.)

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 34283

ANDERSON-PRICHARD OIL CORPORATION, A CORPORATION, *Plaintiff in Error,*

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., *Defendants in Error*

Petition For Rehearing

Comes now Anderson-Prichard Oil Corporation, Plaintiff in Error, and respectfully represents to the Court that on the 2nd day of October, 1951, a decree and judgment was rendered by this Court in said cause affirming Order No. 20,536 of the Corporation Commission of Oklahoma, wherein and whereby the western boundary line of the productive area of the Pooler Zone in the Chickasha Gas Field in Grady County, Oklahoma, was fixed so as to give Anderson-Prichard Oil Corporation only 57 acres as an acreage factor in the allocation formula for production of gas from the Pooler Zone, in lieu of the 160 acres covered by Anderson-Prichard Oil Corporation's lease.

1. That said decision overlooked well established governing principles of law and questions decisive of the case, duly submitted by counsel, in that:

a. When the Court determined in its opinion in the instant case that Sec. 239 authorized the Corporation Commission to take the action complained of herein with reference to the Anderson-Prichard-Thomas Lease and the well located thereon, the action taken being the annihilation, destruction and confiscation of a vested estate and vested property rights, the Court overlooked the fact that such a statute, attempting to vest the Corporation Commission with such authority, is unconstitutional, because it violates the due process clause of the Constitution of Oklahoma, and the Fourteenth Amendment to the Constitution of the United States; and denies to Anderson-Prichard Oil Corporation the equal protection of the laws guaranteed by the Fourteenth Amendment; and that by reason of the unconstitutionality of the statute and the consequent illegal and void acts of the Corporation Commission, predicated thereon, the action of the Corporation Commission should be reversed and declared to be illegal, null and void.

b. When Anderson-Prichard Oil Corporation completed its Thomas No. 1 Well in the Pooler Zone, it acquired a vested estate and property rights in the entire 160-acre lease, and when the Corporation Commission thereafter in effect superimposed a well spacing order over the developed area, including the said Thomas No. 1 Well, and established 160 acres as the drilling unit for the Chickasha Gas Field, and provided that each unit shall have credit for only one well located thereon, the Corporation Commission was without power and authority to direct the use of an acreage factor in allocating production less than 160 in all cases where a producing well had been drilled on a lease containing 160 acres.

c. Any attempt on the part of the Corporation Commission, in such cases as above specified to reduce the acreage factor to any figure less than 160 could be nothing less than an unauthorized and an arbitrary attempt to confiscate and take from Anderson-Prichard Oil Corporation a vested estate and vested property rights, in violation of the due process clause of the Constitution of Oklahoma, and the Fourteenth Amendment to the Constitution of the United States; and also denied to Anderson-Prichard Oil Corpora-

tion the benefit of the equal protection clause of the said Fourteenth Amendment.

2. That the Court in its opinion overlooked the fact that the factual situation in the instant case is such that no evidence could be presented and considered in the case, which would warrant the Corporation Commission in annihilating, destroying and confiscating the vested estate and vested property rights of Anderson-Prichard Oil Corporation in its Thomas lease and the well located thereon, and that by reason of this situation, the substantial evidence rule invoked by the Court has no application to such situations as exist in the instant case, and instead of affirming the order of the Corporation Commission, it should be reversed, vacated, and held for naught because of the lack of legal authority in the Corporation Commission to take such action as it did with respect to a vested estate and vested property rights.

3. That the Court, in rendering said decision, overlooked its decisions rendered in many cases, and the decisions of Courts in other judisdictions, and the principles announced in said decisions, some of the cases being as follows: Royalty Baking Co. v. Oklahoma City, 184 Okla. 45, 75 Pac. (2d) 1105; Oklahoma City v. Dolese Bros., 48 Fed. (2d) 734; Darlington v. Board of Councilmen (Ky.), 140 S. W. (2d) 392; Crossman v. Galveston (Tex.), 247 S. W. 810, 26 A.L.R. 1210; Dobbins v. City of Los Angeles, 194 U. S. 223, 49 L. ed. 169; Walker v. Nix, County Clerk, 196 Okla. 365, 165 Pac. (2d) 378; Baker v. Tulsa Bldg. & Loan Assn., 179 Okla. 432, 66 Pac. (2d) 45; Republic Natural Gas Co. v. State, 198 Okla. 350, 180 Pac. (2d) 1009; Texoma Natural Gas Co. v. Railroad Commission of Texas, 59 Fed. (2d) 750; Thompson v. Consolidated Gas Utilities Corp., 300 U. S. 55, 81 L. ed. 510; Grison Oil Corp. v. Corp. Comm., 186 Okla. 548, 99 Pac. (2d) 134; Peppers Refining Co. v. Corp. Comm., 198 Okla. 451, 179 Pac. (2d) 899; Simpkins v. State, 35 Okla. Cr. 143, 249 Pac. 168, 170; Anniston Mfg. Co. v. Davis, 301 U. S. 377, 81 L. ed. 1143; Chippewa Indians v. U. S., 301 U. S. 358 81 L. ed. 1156; Patterson v. Stanolind Oil & Gas Co., 182 Okla. 155, 77 Pac. (2d) 83, 305 U. S. 376, 83 L. ed. 231; other cases will be dealt with in the brief filed in support hereof.

Oral Argument Requested

4. Inasmuch as it appears that the Court has failed to apply the controlling principles and rules of law governing a correct decision in this case, and owing to the fact that it is the first case of its kind that has been presented to the Court and is one of great importance to those who have vested estates and property rights, and owing to the far-reaching effect that a decision in this case will have upon such estates and property rights, we respectfully request that further oral argument be had in the case.

Wherefore, Plaintiff in Error prays that oral argument be granted upon this motion and that a rehearing of said cause be granted by this Honorable Court.

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BRIEF AND ARGUMENT IN SUPPORT OF PETITION FOR REHEARING

Preliminary Statement

The opinion in this case correctly holds that the owner of a developed oil and gas lease has a vested estate in the land covered by the lease. This should be regarded as elementary in Oklahoma because the Court has so held a number of times and likewise, as the opinion in the instant case holds, all property is held subject to the valid exercise of the police power.

Notwithstanding the fact that the Court in its opinion correctly stated the abstract rules of law just pointed out, yet, in rendering its decision, we respectfully assert that it overlooked the fundamental principles which control and restrict governmental authorities in the exercise of their police power over property and vested property rights.

In order that this fundamental and controlling rule of law may be clearly placed before the Court, we desire to discuss this question under the following proposition:

PROPOSITION ONE

In the exercise of police power in relation to any property the Corporation Commission, or any other authority assuming to exercise such power, has to deal with the property as it stands when it assumes jurisdiction to exercise the police power over the same; and in the exercise of such police power vested property rights cannot be destroyed.

This same question was discussed in our other Briefs filed in this case, but the propositions were not clothed in the same language and unquestionably we failed in our effort to acquaint the Court with what we claim is fundamentally wrong with what has been done in this case. We say we failed because the Court never even referred to the point

which we attempted to make, and yet we know, as definitely as we can know any principle of law, that we are correct in our position. We assert this because case after case has been reversed on account of the violation of the same principle that we are asserting here, by our own Court and the Supreme Court of the United States, as we shall hereafter point out.

What was the situation when the Corporation Commission assumed jurisdiction of the Chickasha Gas Field and began to exercise its so-called "police power" with respect to the Thomas lease owned by Anderson-Prichard?

Many companies had drilled wells upon their leases at such places as they desired and Anderson-Prichard had drilled a gas well upon its 160-acre lease and not upon a 57-acre lease, which well when drilled was a mile south of the nearest well on the north, and there was no well anywhere to the east, and the nearest well to the southeast was 5/8ths of a mile away.

In order that this Court can see the picture of the situation when Thomas No. 1 Well was drilled, we have placed in the back of this Brief a map showing the entire field, and the wells which had been drilled into the Pooler Zone at the time the Thomas No. 1 Well was commenced; and in viewing the map, bear in mind that, when the well was drilled, the superimposed so-called "boundary" of the Pooler Zone now shown on the map was not in existence, for the Corporation Commission had taken no action regarding the fixing of any boundary. Anderson-Prichard drilled its well on its 160-acre lease just as other operators in the field had drilled their wells.

And, as is patent from the map, the Thomas No. 1 Well was virtually a wild cat well and it had a thicker Pooler sand body in it than any well in the field, and had a potential of 23.4 million cubic feet of gas per day—one of the largest, if not the largest producer in the field.

With the lease thus developed and the operation thereof by Anderson-Prichard proper and legal, in every respect, the Corporation Commission, in the exercise of its police power, in effect stepped in and superimposed a well-spacing order over the field, fixing the unit of development at 160 acres, with one well to the unit; and then, in the same order, under the guise of regulation, eliminated 103 acres from Anderson-Prichard's lease as non-productive and non-usable as any part of the acreage factor in the allocation of gas which might be produced from the Thomas No. 1 Well. We assert that this action is without a parallel in the jurisprudence of the State of Oklahoma, or anywhere else.

It is a common thing, as this Court well knows, after an oil and gas field has been discovered, for some interested party to go before the Corporation Commission and make application for a well spacing order, asking for a well-spacing unit of 10, 20, or 40 acres for oil, or 160 acres or more for gas, as the case may be. Almost without exception, when such an application is made, there are a number of completed wells, and others in the process of drilling, in the proposed well-spacing area, and some of these wells are off pattern, and, yet, in every instance there is an exception made in the well-spacing order in favor of the unit which has a well off pattern. The Commission does not undertake to outlaw the off pattern well, nor to reduce the acreage in the unit on which the well is located, or penalize it in any other manner. Why does the Commission thus act in such a situation? It is because, when the Commission assumes jurisdiction to exercise its police power, it has to respect the vested property rights of every operator in the field as such property rights then stood; and we do not believe that there is a lawyer or a court but what would instantly say that such a course has to be pursued or the order would be unconstitutional and void; and, yet, the very thing the Corporation Commission avoids in its well-spacing order is exactly what

was imposed upon Anderson-Prichard, and the decision in the instant case upholds it; however, we believe, and that is evident from the decision itself, that the Court overlooked the principle of law which we are now discussing, or it would not have held as it did.

Let us follow well spacing further: if after a spacing order is established and an operator desires to drill a well off pattern because by doing so he believes he can have his well better located from a geological standpoint, he can, by applying to the Commission, secure a change of location, and the Commission, in such a case, has authority to adjust the equities. But it took an Act of the Legislature to vest authority in the commission to adjust the equities in such a situation, Section 1 (b) (1), Session Laws 1947, Page 329; and it will be noted that the adjustment has to be in such instances as above mentioned before the well is drilled, and *not afterwards.* The requirement that the adjustment must be made before the well is drilled is because, if the law should attempt to let the adjustment be made afterwards, it would be tantamount to authority to destroy vested property rights which cannot be legally authorized.

The Court, in its opinion at Page 17, cited *Patterson* v. *Stanolind Oil & Gas Co.*, 182 Okl. 155, 77 P. 2d 83, 305 U. S. 376, 83 L. ed. 231, as upholding the police power of the State, which includes the protection of correlative rights of owners in a common source of oil and gas supply, and holding that such protection might be given by well spacing without violating either the Oklahoma Constitution or the Fourteenth Amendment to the Constitution of the United States. We find no fault with the valid exercise of the police power, but there was nothing in the *Patterson* case which, from a factual standpoint, was even related to the basic question in the instant case.

In the *Patterson* case, the well-spacing order fixing 10 acres as the unit was superimposed over the property that

belonged to two different people; one owned 6¼ acres and the other owned 3¾ acres, and the spacing order provided that each should share in the royalty in the proportion of the acreage which he owned, and the Court held that this was proper.

But, suppose the Corporation Commission at the time it superimposed its order over property involved in the *Patterson* case, also determined in the order that only a portion of the 10 acres would produce oil and cut the production of the well accordingly, that would have been typical of what the Corporation Commission did in the instant case. The two situations just set forth are as far apart in principle as the east is from the west. In the *Patterson* case, both parties got the full benefit of every acre of land he owned in the unit; and in the supposed case, which is identical with the instant case, the Commission undertook to eliminate and destroy a portion of the vested estate, and deprive the owners of the benefit thereof. We cannot believe that, if the *Patterson* case had involved such a situation as obtains in the instant case, it would have been affirmed either by this Court or the Supreme Court of the United States. Such a handling of property and property rights could not be valid.

At Page 17 of the Court's decision in the instant case, the Court quoted at length from *Lombardo* v. *City of Dallas (Tex.)*, 73 S. W. 2d 475, wherein the court held that a police regulation operating as a restraint upon private rights is not an unlawful exercise of the police power. Every police regulation is some form of restraint and we certainly do not disagree with that rule of law, but in view of the factual situation which obtains in the instant case, a quotation from the *Dallas* case is conclusive proof to us that the Court overlooked the basic principle of law which governs this case and which, if followed, irresistibly leads to a reversal of the case.

Here are some cases which involve a principle similar to

that in the instant case and we believe these should be controlling in this case.

Just one month before the decision was rendered in the *Patterson* case, this Court rendered a decision in *Royal Baking Co.* v. *Oklahoma City*, 182 Okl. 45, 75 P. 2d 1105, predicated upon the identical rule of law which we are invoking in the instant case. The City of Oklahoma City passed a zoning ordinance and, at the time the ordinance was passed, the Royal Baking Company had been operating a commercial bakery for a great many years in the area where such business was prohibited by this zoning ordinance, and about five years before the passage of the ordinance, the bakery purchased two adjoining lots to be used as a part of its plant, and nad done some improvement on the lots in furtherance of its business before the ordinance was passed; and, as time went on and changes were made, the city secured an injunction against the Royal Baking Company and the company appealed to this Court; and the Court reversed the trial court.

The law, as well as further pertinent facts, will appear from the following excerpts from the opinion:

> "'Petitioner's business had been established at its present location long before the passing of the zoning ordinance and was actively conducted at the time the ordinance went into effect; accordingly, as the property was then used for lawful purposes the city was without power to compel a change in the nature of the use, or prevent the owner from making such necessary additions to the existing structure as were needed to provide for its natural expansion and the accommodation of increased trade, * * *.'
>
> "* * * Laws should not be given a construction which will imperil their validity when reasonably open to a construction free from such peril. Chippewa Indians v. United States, 301 U. S. 358. * * * we can, in view of all the circumstances of this case, avoid the necessity of declaring the ordinance unconstitutional

either in its application or its general scope • • •.

"So holding, it follows that the trial court erred in issuing the injunction, and its judgment must be reversed, with directions to dismiss the petition."

See, also: Oklahoma City v. Dolese Bros., 48 F. 2d 734.

• • • • •

In *Crossman* v. *Galveston (Tex.)*, 247 S. W. 810, 26 A.L.R. 1210, the court had before it an ordinance of the City of Galveston which created a fire district and declared certain wooden structures in the district nuisances, and directed their removal. The court, in holding that the ordinance was unconstitutional, used the following language:

"• • • The building having been lawfully erected before its locality was included within the fire limits, it could not, merely because of wooden construction, be condemned as a nuisance, nor could the right of repair be denied unless the repair should amount to a substantial reconstruction of the building.

"Insofar as this ordinance denies the plaintiffs in error the right to repair their wooden building, lawfully erected prior to the inclusion of the territory in which it is located within the fire limits of the city, it takes their property without due process of law, and is null and void."

In *Dobbins* v. *City of Los Angeles*, 195 U. S. 223, 49 L. ed. 169, the court had under consideration an ordinance which prohibited the erection of a gas plant in a certain portion of the city. At the time the construction of the plant was begun, it was located in territory where such a structure could be erected, but the ordinance was amended, placing the ground on which the plant was being erected in forbidden territory, and an effort was made to enjoin the construction of the plant.

The court, in deciding against the power of the city to prohibit the completion of the plant, said:

"• • • The question presented involves the right of the plaintiff in error to invoke the protection of the 14th Amendment against alleged infraction of her rights by the action of the city council in passing and enforcing the ordinances which prevent the carrying on of the business of making and selling gas to the people of the city.

• • • • •

"Applying the principles settled by these decisions to the allegations of the bill, admitted by the demurrer, we think a case is made which called for the protection of the courts against arbitrary interference with the rights of the plaintiff in error. Complying with the terms of the ordinance which was in force when the plaintiff in error was about to begin the erection of the gasworks in controversy, a tract of land was purchased within the district wherein the erection of such works was permitted, a contract was entered into for the construction of the works, a considerable sum of money was expended. • • • But the exercise of the police power is subject to judicial review, and property rights cannot be wrongfully destroyed by arbitrary enactment. • • • Being the owner of the land, and having partially erected the works, the plaintiff in error had acquired property rights, and was entitled to protection against unconstitutional encroachments which would have the effect to deprive her of her property without due process of law.

• • • • •

"In this case we think the allegations of the bill disclose such character of territory, such sudden and unexplained change of its limits after the plaintiff in error had purchased the property and gone forward with the erection of the works, as to bring it within the class of cases wherein the court may restrain the arbitrary and discriminatory exercise of the police power which amounts to a taking of property without due process of

law and an impairment of property rights protected by the 14th Amendment to the Federal Constitution."

• • • • •

The Court, at Page 5 of its opinion, cited *Republic Natural Gas Co.* v. *State*, 198 Okl. 350, 180 P. 2d 1009, for the apparent purpose of showing that the Corporation Commission has the right to regulate the taking of natural gas from a common source of supply. There can be no doubt about that rule of law; but that is not the question which is involved in the instant case. The question here is what authority does the Corporation Commission have to annihilate vested rights under the guise of regulation. When the Corporation Commission stepped into the Chickasha Gas Field and superimposed a 160-acre spacing order over that field, in which many of the leases were developed as the Anderson-Prichard lease, and had thereby become vested estates in the owners, the Corporation Commission was without any authority to deduct any of the acreage from that vested estate, and to deny Anderson-Prichard the full benefit thereof.

This very principle was recognized when this Court in *Republic Natural Gas Co.* v. *State, supra*, distinguished it from *Texoma Natural Gas Co.* v. *R. R. Commission of Texas*, 59 F. 2d 750, and *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, 81 L. ed. 510, by saying "in each of those cases the Conservation Act stricken down as unconstitutional was enacted long after the parties who were there required to take gas from the wells of others had entered the State and made contracts for the production and purchase of natural gas. This fact (says this Court) distinguishes them from the instant case and in our judgment deprives them of controlling force."

The Supreme Court of the United States declared the action of the Railroad Commission of Texas unconstitu-

tional because the Railroad Commission did in effect in the instant case; and this Court, in the *Republic Natural Gas Co.* case, by the language used as above set forth, expressed its approval of the holding in those cases, but distinguished them from the question involved in that case. However, regardless of whether the Court expressed its approval or not, we take it that the Court is bound by such decisions because they are from the highest court in the land having jurisdiction of such matters.

And it will be remembered that the Supreme Court of the United States, in *Thompson* v. *Consolidated Gas Utilities Corporation,* said:

> "Our law reports present no more glaring instance of taking of one man's property and giving it to another. * * * And this court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."

The Court, in its opinion, in discussing the right of the Corporation Commission to exercise police power, dealt only in generalities and pointed out the general rule applicable only to ordinary situations, and overlooked a limitation which always stands guard over vested estates and property rights which is very applicable to and controlling in the instant case. This Court proclaimed that (same) rule in *Grison Oil Corp.* v. *Corp. Comm.,* 186 Okl. 548, 99 P. 2d 134, when it said:

> "While they (private rights) must yield to its (police power) reasonable exercise, it is not contemplated that they be annihilated thereby * * *."

The same rule was recently announced in *Peppers Refining Co.* v. *Corp. Comm.,* 198 Okl. 451, 179 P. 2d 899.

* * * * * * *

But the opinion in the instant case approves the annihilation and confiscation of 103 acres of the Anderson-Prichard lease on which it had a vested estate, and the prohibition of the use of the 103 acres in the allocation of gas. In other words, Anderson-Prichard had purchased and developed a 160-acre lease, and the Corporation Commission, under the guise of regulation, reduced it to a lease covering only 57 acres, and then regulated the production from the 57 acres as though the lease covered only that amount of acreage. When Anderson-Prichard drilled its well, it had a 160-acre lease and was entitled to receive gas from a 100% well, but when the Corporation Commission applied its pruning knife and elimination process under the guise of regulation, Anderson-Prichard was given credit for having only a 57-acre lease and, by reason thereof, was held to be entitled to have the gas which might be produced from the well allocated on the basis of a 35% well.

By the same process, a 160-acre lease could be reduced to a 5-acre lease and the owner given only a 5% (3.125%) well, and thus have the bright hopes induced by the discovery of one of the best wells in the field shattered and destroyed, with the result that the recovery of gas therefrom would be wholly insufficient to reimburse the owner for the great outlay expended in developing his lease, not withstanding the fact that such well is one of the best producers in the entire field: all because of the arbitrary and confiscatory action of the Corporation Commission after the well was drilled. We are not yet resigned to the belief that vested estates and property rights in Oklahoma are so uncertain and fragile, and so easily destroyed. If this is not the most outstanding example of the destruction of vested property rights under all the decisions, we would have no idea where to look for a better example.

An attempt has been made to justify such action as above set forth by Section 239, 52 O. S. 1941, because it gives to

the Corporation Commission the right to apportion gas among the owners of various wells in a field in "such proportion of the natural gas • • • as the natural flow of the wells owned • • • bears to the total natural flow of such common source of supply, *having due regard to the acreage drained by each well.*"

We assert that the statute does not contemplate such action on the part of the Corporation Commission as was had in the instant case. It was never intended by the Legislature, when the statute was passed, that the Corporation Commission should be vested with such power and authority as is claimed in this case, Furthermore, we assert, without hesitation, based upon the clear holding of case after case above cited, and the cases which will hereafter be cited, that if this Court should finally hold as the Corporation Commission and other interested parties insist that it should hold, the statute would be unconstitutional. It would be tantamount to holding that the statute authorizes the destruction of vested estates in property and property rights, right in the face of the due process clause of the Oklahoma Constitution and the Fourteenth Amendment to the Constitution of the United States, and there would be also a denial of the equal protection of the laws as guaranteed by the Fourteenth Amendment.

This statute, it will be remembered, was passed in 1915, and has been a statute of this State for more than 36 years, and yet this is the first case of its kind which has ever reached this Court. Is it not rather strange that 36 years elapsed before the Corporation Commission undertook to exercise such authority as it has attempted to in this case?

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As we have hereinbefore pointed out, to place the construction upon the statute which the Corporation Commission and other interested parties insist should be placed

upon it would place the Legislature in the position of authorizing the Corporation Commission to destroy vested estates and property rights, and the law would be unconstitutional and the action of the Corporation Commission predicated thereon would be unauthorized, unconstitutional and void. On the other hand, if the statute was enacted for the purpose we contend it was, and our view of its construction as above set forth should be adopted, then the statute is valid and only the order of the Corporation Commission in the particulars about which complaint is made in the instant case is unauthorized, unconstitutional and void. Of course, regardless of the construction that the Court may give to the statute, the action of the Corporation Commission for the reasons above shown is unauthorized, unconstitutional and void.

Anniston Mfg. Co. v. *Davis*, 301 U. S. 337, 81 L. ed. 1143, announces the rule which should be followed in construing the above statute. The gist of the holding of the court is set forth in one of the headnotes of the case in the following language:

> "Of two possible constructions of a statute, that one should be adopted which will save the statute from unconstitutionality."

Also the same holding was made in *Chippewa Indians* v. *U.S.* 301, U. S. 358, 81 L. ed. 1156; and this case was cited with approval by this Court in *Royal Baking Co.* v. *Oklahoma City, supra.*

In the two United States cases last cited, one construction of the statute passed by Congress would have given it a meaning to the effect that Congress intended by the Act to take title to certain lands from one Tribe of Indians and vest it in another Tribe, which construction would have made the Act unconstitutional. The statute was also susceptible to the construction that the transfer of title had to be made

with the consent of the Tribes. Hence, the court ruled in the cases as above indicated, and upheld the constitutionality of the statute.

The question now before the Court with respect to the above Section 239, 52 O. S. 1941, is of the same nature as the question involved in the two United States Supreme Court cases just discussed. If this Court holds that the Legislature intended by the statute to vest the Corporation Commission with power and authority to strike down and destroy vested estates and property rights in a developed oil and gas lease, under the guise of regulation, and deprive the owner of the benefit thereof, as the Corporation Commission has done in the instant case, the statute is unconstiutional, as is evident from all the cases above cited, some of which are from this Court.

PROPOSITION TWO

If the Court finally holds, as indicated in its opinion in the instant case, that Section 239, 52 O. S. 1941, authorizes the Corporation Commission to take the action which it did with respect to Anderson-Prichard's Thomas lease and the Thomas No. 1 well located thereon, then such statute, as well as the order of the Corporation Commission predicated thereon, is unconstitutional because it would be judicially determined that the statute authorizes the annihilation, destruction and confiscation of vested estates and vested property rights in violation of the due process clause of the Constitution of the State of Oklahoma and the Fourteenth Amendment to the Constitution of the United States, and denies to Anderson-Prichard the equal protection of the laws guaranteed by the Fourteenth Amendment. That by reason of these constitutional violations, the order of the Corporation Commission should be reversed, vacated and declared to be void.

The above proposition correctly states the law as is definitely shown by the many authorities which we have hereinbefore discussed and we feel that, if we were at this time to undertake to review such authorities, it would be placing an unnecessary burden upon the Court without serving any particular purpose, so we shall respectfully request the Court to consider all the authorities referred to in the light of this proposition, for we believe they unquestionably sustain the correctness of same.

However, there is one point with reference to this proposition which we believe should be emphasized * * *. * * * we have in mind the assertion that, if this Court holds that Section 239, 52 O. S. 1941, authorizes the Corporation Commission to take 103 acres from Anderson-Prichard's 160 acres and use the 57 acres as the allocation factor, instead of the 160, then that adjudication as to the meaning of Section 239 places that Section in the category of an unconstitutional statute. The due process clause of the Constitution of Oklahoma and the Fourteenth Amendment to the Constitution of the United States definitely prohibit any legislation that would destroy vested estates and vested property rights and we have shown beyond any question, and this Court has so held in its opinion in the instant case, that when Anderson-Prichard drilled its Thomas No. 1 Well on its Thomas lease, and secured gas in commercial quantities, it thereby acquired a vested estate in the land covered by the lease and any statute which would authorize the Corporation Commission to annihilate and confiscate 103 acres, or any other amount of that vested estate, would be unconstitutional and in such situation, both the statute and the action of the Corporation Commission predicated thereon, would be unconstitutional and void.

* * * * * * *

• • • when a statute is susceptible to two constructions, one of which would render it valid and the other unconstitutional • • • we know that the elementary rule is that the Court should adopt the construction which would render the statute valid, rather than unconstitutional and void. The particular cases which we have in mind are: *Royal Baking Co.* v. *Oklahoma City*, 182 Okl. 45, 75 P. 2d 1105; *Anniston Mrg. Co.* v. *Davis*, 301 U. S. 337, 81 L. ed. 1143; *Chippewa Indians* v. *U. S.*, 301 U. S. 358, 81 L. ed. 1156.

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PROPOSITION THREE

Under the factual situation which obtains in this case, no evidence is competent to show that an acreage factor of less than 160 can be legally required in the allocation of gas which is permissible to be produced from the Thomas No. 1 well, and the case is not one where the "substantial evidence" rule can be invoked in favor of the legality of the order of the Corporation Commission.

We have contended throughout this case that no evidence under the factual situation which obtains in this case is competent to show that a formula containing less than 160 as an acreage factor can be legally applied to the Thomas No. 1 Well. We believe the authorities hereinbefore discussed under other propositions conclusively show the correctness of our contention, and we shall not here again burden the Court with a further discussion of these authorities; and, inasmuch as vested estates and vested property rights cannot be destroyed by evidence, the "substantial evidence" rule cannot be invoked in support of the legality of the order of the Corporation Commission.

• • • We say this because the above cases which have been hereinbefore cited and discussed, show conclusively

that vested estates and property rights cannot be thus annihilated, destroyed and confiscated.

Conclusion

* * * We do not believe we are wrong in our position in this case, because too many courts have said, in effect, that we are right.

We submit this Petition for Rehearing with confidence that a rehearing should be granted, the cause reversed, and the Order of the Corporation Commission declared to be illegal, null and void.

Respectfully submitted,

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